SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 345

EMANUEL POLLOCK, APPELLANT,

vs.

H. T. WILLIAMS, AS SHERIFF OF BREVARD COUNTY, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1943.

—8902

[fols. 1-3] [Caption omitted]

[fol. 4] **IN THE CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA**

2980

HABEAS CORPUS

EMANUEL POLLOCK, Petitioner,

vs.

H. T. WILLIAMS, as Sheriff of Brevard County, Florida, Defendant

PETITION FOR WRIT OF HABEAS CORPUS—Filed January 11, 1943

Comes now Emanuel Pollock, alias Mann Pollock, and shows to the court that the defendant, H. T. Williams, is the duly qualified and acting Sheriff of Brevard County, Florida, and ex-officio keeper of the jail of said county and custodian of prisoners kept therein, and that the said H. T. Williams, as said Sheriff, unlawfully restrains the petitioner of his liberty in violation of the Constitution of the United States and laws duly enacted pursuant thereto; that the said sheriff so restrains petitioner under a pretended commitment from the County Judge's Court having jurisdiction within said county; that the said commitment purports to be based upon a judgment of conviction and [fol. 5] sentence for a pretended violation of a certain statute of the State of Florida, being Chapter 7917, Laws of Florida, 1919, and now being Sections 817.09 and 817.10 of the Florida Statutes, 1941. Petitioner states that said statute is repugnant to the 13th and 14th Amendments to the Constitution of the United States of America, and acts of Congress, particularly Section 56 Title 8 of the United States Code, duly enacted pursuant to the provisions of said amendments, and is void and of no effect. By reason whereof the said court was without jurisdiction of said cause, that no offense against the laws of the State of Florida was charged in said warrant, and the said judgment, sentence and commitment are void, and the imprisonment of petitioner is illegal and in violation of his rights under the Constitution and laws of the United States.

And the petitioner further states that, at the trial aforesaid, he was not told that he was entitled to counsel, and that counsel would be provided for him if he wished, and he did not know that he had such right. Petitioner was without funds and unable to employ counsel. He further avers that he did not understand the nature of the charge against him, but understood that if he owed any money to his prior employer and had quit his employment without paying the same, he was guilty, which facts he admitted. Whereupon the record shows that a plea of guilty was entered, and the aforesaid judgment and sentence was thereupon pronounced upon him, all in violation of his rights under the Constitution and laws of the United States of America and of the State of Florida. A copy of the warrant, plea and judgment is attached hereto and made a part hereof.

Wherefore, petitioner prays that a writ of habeas corpus be issued and directed to the defendant herein, commanding [fol. 6] him to make due return thereto, and to have the body of your petitioner before the court at a time and place therein fixed, and upon hearing that judgment be entered discharging petitioner from custody, and the restraint aforesaid.

Emanuel his XX mark Pollock, Petitioner. Maguire, Voorhis & Wells, W. H. Poe, Attorneys for Petitioner.

STATE OF FLORIDA,
County of Brevard, ss:

Personally appeared Emanuel Pollock before the undersigned authority, and upon being duly sworn, deposed and said:

That he is the petitioner named in the foregoing petition, that he is familiar with the facts alleged in said petition, and said allegations of fact are true.

Emanuel his X mark Pollock.

Subscribed and sworn to before me this 11 day of January, A. D. 1943. Mamie Gilliam, Notary Public, State of Florida at Large. My commission expires Feb. 12, 1945. (Notary Seal.)

[fol. 7] EXHIBIT TO PETITION

BREVARD COUNTY,
State of Florida:

STATE OF FLORIDA
vs.
MANN POLLOCK

In the Name of the State of Florida, to all and singular the Sheriff, his lawful deputies, or any Constable; of the State of Florida:

Whereas, C. W. Bates has this day made oath before me that on the 17th day of October A. D. 1942, in this county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service, procure and obtain money, to-wit: the sum of $5.00, as advances from one J. V. O'Albora, a corporation, contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Florida;

There are, therefore to command you to arrest instanter the said Mann Pollock and bring him before me to be dealt with according to law.

Given under my hand and seal this 2nd day of January, A. D. 1943.

Vassar B. Carlton, County Judge, Brevard County, Florida. (Seal.) (C. J. Seal.)

[fol. 8] In Court of County Judge, Brevard County, State of Florida. State of Florida vs. Mann Pollock. Warrant. Filed 5th day of Jan. 1943. Vassar B. Carlton, County Judge, Brevard County, Florida.

Received this Warrant 5th day of Jan., —— A. D. and executed it on the 5th day of Jan. A. D. 1943 by arresting the within named Mann Pollock and having him now before the Court Jan. 5, 1943.

Fees:

Arrest	$2.00
Return	.25
Committing to Jail	1.00
Mileage 18	2.25
Release	.50
Approving Bond	
Total	$6.00

Sheriff, Brevard County, Fla., by —— ——, Deputy Sheriff.

[fol. 9] EXHIBIT TO PETITION

STATE OF FLORIDA

vs.

MANN POLLOCK

Date of trial January 5, 1943.

Defendant called for trial January 5, 1943, and plead guilty.

Judgment of Court:

"It is considered, ordered and adjudged that the defendant, Mann Pollock, is guilty as charged in the affidavit. Further ordered that said defendant do pay a fine of $100.00 to include costs of this case, and that in default of payment thereof he serve a period of 60 days in the County jail of Brevard County, Florida."

Commitment issued January 5, 1943.

Given under my hand and seal this 5th day of January, A. D. 1943.

Vassar B. Carlton, County Judge. (C. J. Seal.)

As shown in Criminal Docket No. 14, Page 338.

[fol. 10] IN CIRCUIT COURT OF BREVARD COUNTY

WRIT OF HABEAS CORPUS—Filed January 11, 1943

The State of Florida to H. T. Williams, as Sheriff in and for Brevard County, Florida, Greeting:

It having been made to appear to the Court by petition herein that you unlawfully restrain of his liberty, one Emanuel Pollock, alias Mann Pollock, in violation of the Constitution and laws of the United State- of America and of his rights under the Constitution and laws of the United States of America and the State of Florida, and the Court being willing to inquire into the truth and justice thereof,—

Therefore, you are hereby commanded to be and appear before the undersigned Judge of said Court at Titusville, Florida, on the 11th day of January, 1943, at 10 o'clock

A. M. and make due return to this writ as required by law; and if you have the said Emanuel Pollock, alias Mann Pollock, in your custody or control, that you produce his body at said time and place together with the cause of his detention and restraint, and show cause why he should not be discharged therefrom.

Herein fail not, at your peril, and have you then and there this writ.

Done and Ordered at Titusville, Florida this 11th day of January, 1943.

M. B. Smith, Judge.

[fol. 11] In Circuit Court of Brevard County

Return of Sheriff—Filed January 11, 1943

Comes now H. T. Williams, as Sheriff in and for Brevard County, Florida, in response to writ of habeas corpus issued by the above named Court and states to the Court that he holds the petitioner under and by virtue of the commitment issued out of the County Judge's Court of Brevard County, Florida, based upon the judgment and conviction as set forth in the petition and thereupon brings the defendant before the Court for its judgment in the premises.

This 11th day of January, A. D. 1943.

H. T. Williams, As Sheriff of Brevard County, Florida.

[fol. 12] In Circuit Court of Brevard County

Judgment—Filed January 11, 1943

This cause came on to be heard on the petition, the writ of habeas corpus, and the return of the defendant thereto, and the Court hearing argument of counsel and being sufficiently advised in the premises finds that the statute under which the warrant, judgment and commitment were founded is unconstitutional and void and the imprisonment of the petitioner illegal.

It Is, Thereupon, Considered, Ordered and Adjudged that the Petitioner be and he is hereby discharged from the custody of the defendant.

It Is Further Considered, Ordered and Adjudged that the petitioner do have and recover his costs in the sum of $—— which costs are hereby awarded in his favor.

Done and Ordered at Titusville, Florida, this 11th day of January, 1943.

M. B. Smith, Circuit Judge.

No. 19115. Filed Jan. 11, 1943 at 2:15 o'clock P. M. Recorded in the Public Records of Brevard County, Florida, in the Book and Page Noted above. (Signed) G. M. Simmons, Clerk Circuit Court. (Circuit Court Seal.)

[fol. 13] In Circuit Court of Brevard County

Application for Leave to Appeal—Filed January 27, 1943

Comes now the State of Florida and respectfully moves the Court to enter its order allowing the State of Florida to enter its appeal to the Supreme Court of Florida to review the judgment of the Circuit Court of Brevard County, Florida, bearing date the 11th day of January, A. D. 1943, entered in the above styled cause and recorded in the records of said Court in Book 18, P. 99.

(Signed) J. Tom Watson, Attorney General of Florida; (Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for State of Florida.

[fol. 14] In Circuit Court of Brevard County

Order Allowing Appeal—Filed January 27, 1943

This cause coming on to be heard this day upon the application of the Attorney General of Florida for the entry of an order allowing the State of Florida to enter its appeal to the Supreme Court of Florida to review the judgment of this Court bearing date the 11th day of January, A. D. 1943, said judgment being entered in the above styled cause and recorded in the records of this Court in Book 18, page 99, and the Court being advised of its opinion in the premises, it is, therefore,

Ordered, Adjudged and Decreed that the State of Florida be and is hereby allowed to enter its appeal to the Supreme

Court of Florida to review the judgment of this Court bearing date the 11th day of January, A. D. 1943, said judgment being entered in the above cause and recorded in the records of this Court in Book 18, page 99.

Done and Ordered at Titusville, Florida, this 27th day of January, A. D. 1943.

M. B. Smith, Circuit Judge.

[fol. 15] In Circuit Court of Brevard County

Notice of Appeal—Filed January 27, 1943

The State of Florida takes and enters this its appeal to the Supreme Court of Florida to review the judgment of the Circuit Court of Brevard County, Florida, bearing date the 11th day of January, A. D. 1943, entered in the above styled cause and recorded in the records of said Court in Book 18, page 99, and all parties to said cause are called upon to take notice of the entry of this appeal.

(Signed) J. Tom Watson, Attorney General of Florida; (Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for State of Florida.

[fol. 16] In Circuit Court of Brevard County

Assignments of Error—Filed February 4, 1943

Comes now the State of Florida and presents this its Assignment of Error upon which the reversal of the judgment of the Circuit Court of Brevard County, Florida, appealed from, will be sought:

(1) That the Court by its judgment of January 11, 1943, recorded in Circuit Court Minute Book 18, page 99, erred in adjudging that Section 817.09, Florida Statutes 1941, is unconstitutional.

(2) That the Court by its judgment of January 11, 1943, recorded in Circuit Court Minute Book 18, page 99, erred in adjudging that Section 817.09, Florida Statutes 1941, is repugnant to the 13th and 14th Amendments to the

Constitution of the United States and the Acts of Congress, particularly Section 56, Title 8 of the United States Code.

(Signed) J. Tom Watson, Attorney General;
(Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for the State of Florida.

[fol. 17] In Circuit Court of Brevard County

Affidavit of Service—Filed February 4, 1943

State of Florida,
County of Leon:

On this day personally appeared before me, a Notary Public in and for the State at large, Woodrow M. Melvin, Assistant Attorney General, who, being first duly sworn, on oath says that he did on this day serve Messrs. Maguire, Voorhis, and Wells, Attorneys for Petitioner in the above entitled cause, with a copy of the State's Application for Leave to Appeal, the Order allowing appeal, Notice of Appeal, Assignments of Error, and Directions to the Clerk. The service was made by mailing said copies sealed in an envelope addressed to said Messrs. Maguire, Voorhis & Wells, Attorneys at Law, Orlando, Florida, with sufficient postage thereon to insure its delivery at destination, the same being mailed in the post office at Tallahassee, Florida, on this the 2nd day of February.

Woodrow M. Melvin.

Sworn to and subscribed before me this 2nd day of February, 1943. Evelyn Davis, Notary Public, State of Florida at —. My Commission Expires Mar. 7, 1943. (Notary Seal.)

[fol. 18] In Circuit Court of Brevard County

Praecipe for Transcript of Record—Filed February 4, 1943

The Clerk of this Honorable Court will please prepare the transcript of record in the cause of Emanuel Pollock versus H. T. Williams, as Sheriff of Brevard County, Florida, and include in said transcript the following papers:

(1) Petition for Writ of Habeas Corpus, and Exhibits thereto attached.

(2) Writ of habeas corpus.
(3) Return filed by H. T. Williams, as Sheriff, to writ of habeas corpus.
(4) Judgment of the Court entered on January 11, 1943, and recorded in Minute Book 18, page 99.
(5) Application for leave to appeal.
(6) Order allowing appeal.
(7) Notice of appeal.
(8) Assignments of error filed by the State.
(9) Affidavit of Service.

The Clerk will please certify and transmit to the Clerk of the Supreme Court of Florida an original copy of the transcript; deliver one true copy of the transcript to [fol. 19] Maguire, Voorhis and Wells, Attorneys at Law, Orlando, Florida, Attorneys of Record for Emanuel Pollock, and transmit to the Attorney General, Tallahassee, Florida, one true copy of the transcript.

(Signed) J. Tom Watson, Attorney General;
(Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for the State of Florida.

[fols. 20-21] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 22] IN SUPREME COURT OF FLORIDA, JUNE TERM A. D. 1943 EN BANC

H. T. WILLIAMS, as Sheriff of Brevard County, Florida, Appellant,

vs.

EMANUEL POLLOCK, Appellee

An Appeal from the Circuit Court for Brevard County, M. B. Smith, Judge.

Maguire, Voorhis & Wells, R. F. Maguire and W. H. Poe, for Appellant, J. Tom Watson, Attorney General and Woodrow M. Melvin, Assistant Attorney General, for Appellee.

OPINION—Filed July 24, 1943

THOMAS, J.:

The appellee pleaded guilty of violating Section 817.09 Florida Statutes, 1941, and was held under a commitment when discharged upon a writ of habeas corpus by the circuit judge who had the conviction that the act offended the Constitution of the United States, presumably the Thirteenth Amendment prohibiting involuntary servitude. The act denounces as a misdemeanant "any person * * * who * * *, with intent to injure and defraud, under and by [fol. 23] reason of a contract or promise to perform labor or service [procures] * * * money or other thing of value as a credit, or as advances * * *."

Better to present our observations on the matter involved we will give also the substance of a related statute, Section 817.10, Florida Statutes, 1941, declaring that the "failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained * * * shall be prima facie evidence of the intent to injure and defraud."

The former was Section 1, the latter Section 2, of Chapter 7917, Laws of Florida, Acts of 1919.

This is not the first challenge of the act which has appeared in this court. The identical matter was considered in Phillips vs. Bell, 84 Fla. 225, 94 So. 699, where the court concluded that the portion of the law defining the crime was harmonious with the Thirteenth Amendment, and observed, without deciding the point, that if the part referring to the prima facie character of certain evidence should be pronounced unconstitutional the ruling would not affect the remainder. The discussion was largely devoted to the applicability of the decisions of the Supreme Court of the United States in Bailey vs. State of Alabama, 211 U. S. 452, 29 Sup. Ct. Rep. 141, 53 L. Ed. 278, and in another case of the same title reported in 219 U. S. 219, 31 Sup. Ct. Rep. 145, 55 L. Ed. 191, to the proposition under study.

We are inclined to adhere to our former decision, but we recognize our duty to refer to the decisions of the Supreme Court of the United States where the interpretation of the federal constitution is involved. Bearing in mind this obligation we will examine, in their order, the first and second cases of Bailey vs. Alabama and Phillips vs. Bell, *supra*,

[fol. 24] then determine the effect upon them of a recent opinion of the Supreme Court of the United States, Ira Taylor v. State of Georgia, *infra*.

In the first there was entertained a petition for habeas corpus in which the constitutionality of a law making it an offense "to enter into a contract * * * for service with intent to * * * defraud the employer, and, after thereby obtaining money * * * from such employer, * * * and without refunding the money or paying for the property, to refuse to perform the service." An amendment made the "refusal or failure [to perform] without just cause prima facie evidence of the intent." The court considered these two features, one denouncing a fraudulent act and one providing a method of proof, together with a rule in Alabama preventing a person from testifying as to his motive. No testimony had been taken in the case and the question was the unconstitutionality of the act and the amendment on their face without regard to the practical application of the amendment and the local rule dealing with proof. This is apparent from the comment of the court: "When the case comes to trial it may be that the prosecution will not rely upon the statutory presumption, but will exhibit satisfactory proof of a fraudulent scheme, so that the validity of the addition to the statute will not come into question at all."

We think it very significant that the court remarked upon the lack of doubt that the offenses defined could be made a crime. Gist of the decision, as we understand it was, summarizing, that the part of the law describing the crime and the one providing for the presumption were not interdependent and that if, in the prosecution, the state did not resort to the latter the validity of the former would be unaffected.

The petitioner was remanded, tried and found guilty. [fol. 25] The Supreme Court of Alabama affirmed the judgment and again the Supreme Court of the United States reviewed the case. It then appeared that the conviction of the defendant was obtained because of the operation of the amendment providing that refusal of the employee to perform was prima facie evidence of intent to defraud the employer. In their analysis the court stressed the possibility of conviction for crime simply because of a breach of contract and failure to discharge a debt. By such flimsy testimony could the presumption of innocence be overcome.

This was particularly true in view of the rule preventing a defendant from swearing that he intended no fraud.

It was the gist of opinion that the statute designed to punish fraud became an instrument to compel service when the provision for prima facie evidence of guilt was brought into play, especially, as will be seen when we discuss Taylor vs. Georgia, *infra*, when the defendant was prohibited from testifying about his purpose or intention. The court concluded that the Alabama law "in so far as it makes the refusal or failure to perform the act or service, without refunding the money or paying for the property prima facie evidence of the commission received [sic] of the crime which the section defines, is in conflict with the 13th Amendment, * * * and is therefore invalid."

From a perusal of both opinions the deduction is inevitable that the law denouncing the crime was not held in conflict with the constitution until made so by invoking in a given case the rule with reference to prima facie evidence and that, standing alone, it was not invalid.

We reach now, in its turn, our own decision in Phillips vs. Bell, *supra*, where the chief justice expressed the opinion, concurred in by the other members of the court, that the section of the Florida Statutes defining the offenses [fol. 26] was not inharmonious with the Constitution of the United States. One feature of that controversy was common to the first Bailey case, no testimony appeared in the record and so there was no need to determine whether the second section, with regard to prima facie evidence, was invalid or whether the first could be invalidated by it. Incidentally, that characteristic is present in the instant case for, as we stated at the outset, the plea was guilty, hence no evidence was taken.

This court drew attention to certain "material differences" between the first portions of the Alabama and Florida Statutes defining the crime and to the similarity of the parts establishing the prima facie evidence rule, but the rationale of the case and of both decisions of the United States Supreme Court to which we have alluded was, we believe, the declaration of the validity of the first section of the act when not infected by employment of the second.

The question now is the effect upon these decisions of the one rendered by the Supreme Court of the United States in, Ira Taylor vs. State of Georgia, 315 U. S. 25, 62 Sup. Ct.

Rep. 415, 86 Law Ed. 615. Mr. Justice Byrnes by way of introduction stated that the "Appellant was indicted * * * for violation of [sections] 7048 and 7409, of Title 26 of the Georgia Code." Although the former defined as crime contracting to perform services "with intent to procure money * * * and not to perform * * * to the loss and damage of the hirer; or after having so contracted, * * * [procuring] from the hirer money, * * * with intent not to perform such service, * * *" the latter provided that "satisfactory proof of the contract," the procurement of the money, the failure to perform or failure to return the money and loss or damage to the hirer, should be "deemed presumptive evidence of the intent referred to in the preceding section."

[fol. 27] Clearly he could not have been indicted for violation of the latter section and while we do not wish to appear hypercritical we draw attention to the phraseology because of the frequent use of the plural in the opinion. It is stated that appellant asserted by way of demurrer to the indictment that sections 7408 and 7409 "were repugnant * * * to the Thirteenth Amendment." After trial upon the evidence had resulted in a conviction a new trial was sought upon this ground and others.

The court held that "There [was] no material distinction between the Georgia statutes challenged [there] and the Alabama statute which was held to violate the Thirteenth Amendment in Bailey vs. Alabama, * * *" (the second case.) The court disposed of the argument—it was the same as the one presented in the second Bailey case—that one section dealt with punishment of fraud and the other a rule of evidence, by announcing that the latter "actually * * * embodies a substantive prohibition which squarely contravenes the Thirteenth Amendment * * *." The conclusion was "that sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment * * *." It will be noted that there is no qualification such as appeared in the latter Bailey case where, to repeat, the Alabama statute was declared invalid "*so far as it* [made] * * * *failure to perform* * * * without refunding the money * * * *prima facie evidence*" of guilt. (Italics supplied by us.)

In view of the unqualified declaration that both were unconstitutional our first impression was that we should recede from the construction we had announced in Phillips

vs. Bell, *supra*. This was emphasized because of the resemblance of the Georgia statute to ours and the finding that no essential distinction existed between the former and the law of Alabama. Thus the axiom "two things [fols. 28-29] equal to the same thing are equal to each other" seemed not inappropriate and the Florida act would fall with that of Georgia, despite our view in Phillips, vs. Bell that "there [were] material differences between the Alabama statutes * * * and the Florida statute."

Upon reflection it seems, however, that it was not the aim of the court to revise in the Taylor decision what had been announced in the second Bailey case.

Plainly, in both, testimony had been introduced to establish those elements necessary to raise the presumption under the statute and it was especially found that without the aid of it conviction could not have resulted. It is manifest, too, as in the later Bailey case, that the court was called upon to construe together the two sections and to determine the effect of one upon the other and of both upon the rights of the appellant. In these circumstances we are not convinced that the Supreme Court of the United States intended to declare both sections unconstitutional regardless of any state of facts that might be presented. In our zeal to follow the decisions of that high tribunal we cannot but believe that the decision in the Taylor case was confined to a situation there present. The section anent presumptive evidence had been relied upon to secure a conviction, so the court again had for determination the question of the constitutionality of the first section when the second was brought into play. Not being faced with that problem here we conclude that the first Bailey decision and ours in Phillips, vs. Bell are in accord and that they in turn are not in conflict with the rulings in the Second Bailey case and Taylor vs. State of Georgia, *supra*.

Reversed.

Buford, C. J., Terrell, Brown, Chapman, Adams and Sebring, J. J., concur.

[fols. 30-31] IN SUPREME COURT OF FLORIDA, JUNE TERM, 1943

H. T. WILLIAMS, as Sheriff of Brevard County, Florida, Appellant,

vs.

EMANUEL POLLOCK, Appellee

JUDGMENT—July 24, 1943

This cause having heretofore been submitted to the Court upon the transcript of the record of the judgment herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is error in the said judgment; it is, therefore, considered, ordered and adjudged by the Court that the said judgment of the Circuit Court be and the same is hereby reversed; it is further ordered by the Court that the Appellant do have and recover of and from the Appellee his costs by him in this behalf expended, which costs are taxed in the sum of $—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Thomas was this day ordered to be filed.

[fol. 32] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed August 16, 1943

To Honorable Rivers Buford, the Chief Justice of the Supreme Court of the State of Florida:

Your petitioner, Emanuel Pollock, respectfully shows:

Your petitioner was the appellee in the above entitled cause, and is the appellant here.

This cause was commenced by petition in the Circuit Court of Brevard County, Florida, by a petition for the issuance of a writ of Habeas Corpus, to be directed to the appellee, H. T. Williams, as Sheriff of Brevard County, Florida, commanding him to produce the body of the peti-

tioner before said Court and show the cause of the detention of the petitioner. It was alleged in the petition that the appellee, as ex-officio keeper of the jail of said County unlawfully restrained petitioner of his liberty in violation of the Constitution of the United States and laws duly enacted pursuant thereto; that the restraint was under a pretended commitment from the County Judge's Court in said County, purported to be based upon a judgment of conviction and sentence for a pretended violation of Chapter 7917, Laws of Florida, 1919, now Sections 817.09 and 817.10 of the Florida Statutes, 1941, which statute reads as follows:

> [fol. 33] "Section 1. (Sec. 817.09, Fla. Stat. 1941). Obtaining property by fraudulent promise to perform labor or service.—Any person in this state who shall, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months.
>
> "Section 2. (Sec. 817.10, Fla. Stat. 1941). Same; prima facie evidence of fraudulent intent.—In all prosecutions for a violation of sec. 817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

The petitioner further alleged that said statute is and was repugnant to the 13th and 14th Amendments to the Constitution of the United States, and Acts of Congress, particularly Section 56, Title 8, of the United States Code, duly enacted pursuant to said Amendments, and is void and of no effect, by reason whereof the County Judge's Court was without jurisdiction of the cause, and that the warrant charged no offense against the laws of the State of Florida, the judgment, sentence and commitment were void, and the imprisonment of defendant was illegal, and in violation of petitioner's rights under the Constitution and laws of the United States.

The petition further alleged that at said trial petitioner did not know, and was not advised, of his right to counsel, and was without funds and unable to employ counsel; that he did not understand the nature of the charge against him, but understood that if he owed any money to his prior employer and had quit his employment without paying the same, he was guilty, which facts he admitted; that thereupon a plea of guilty was entered of record, and judgment and sentence was thereupon pronounced upon him, all in violation of his rights under the Constitution and laws of the United States and the State of Florida. A copy of the warrant, plea and judgment was attached and made a part of the petition. The charging part of said warrant, [fol. 34] which was dated January 2, 1943, was as follows:

> "C. W. Bates has this day made oath before me that on the 17th day of October, A. D. 1942, in this county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service, procure and obtain money, to-wit: the sum of $5.00, as advance from one J. V. D'Albora, a corporation."

The exhibits to said petition further showed that said warrant was executed on January 5, 1943, by taking petitioner into custody, and that he was tried and pleaded guilty on the same day, whereupon the following judgment was entered by the County Judge of said county:

> "It is considered, ordered and adjudged that the defendant is guilty as charged in the affidavit, Further ordered that said defendant do pay a fine of $100.00 to include costs of this case, and that in default of payment thereof he serve a period of 60 days in the County jail of Brevard County, Florida."

The said record further shows that a commitment issued on said judgment on the same day.

The said Circuit Court, on January 11, 1943, issued a writ of habeas corpus, addressed to the appellee, requiring him to make due return to the writ on the same day, and if the petitioner was in his custody or control, to produce his body together with the cause of his detention and restraint, and show cause why he should not be discharged therefrom. At said time, the appellee produced the petitioner, and gave as

the cause of the detention and restraint the commitment from the County Judge's Court based upon the judgment and conviction as set forth in the petition. The return did not deny any of the allegations of fact in said petition.

The Circuit Court, after hearing, adjudged the statute upon which the warrant, judgment and conviction was founded to be unconstitutional and void and the imprisonment illegal, and thereupon discharged the petitioner from the custody of the appellee.

[fol. 35] An appeal from said judgment was duly perfected to the Supreme Court of Florida by appellee, and on July 24, 1943, the Court pronounced its opinion and final judgment in said cause, and reversed the judgment of the Circuit Court aforesaid, holding that the imprisonment of the petitioner was lawful and consistent with the Constitution of the United States. The substance of the holding of the Court was that the first section of the aforesaid statute of Florida was not in violation of the 13th Amendment to the Constitution of the United States, in cases where the second section was not brought into play by the introduction of testimony and use of the presumption of intent created by the second section, e. g., when the conviction is based upon a plea of guilty. The Court did not discuss the alleged violation of the equal protection clause of the 14th Amendment to the Constitution of the United States, but the judgment necessarily overruled the claim of the petitioner grounded upon said clause.

By the aforesaid final judgment the Supreme Court of Florida has directed the Circuit Court of Brevard County, Florida, to vacate its judgment aforesaid, and to remand the petitioner to the custody of the appellee for the execution of the sentence of the County Judge of said County.

That the Supreme Court of Florida is the highest Court of the State of Florida in which a decision of this suit can be had.

That in said suit there is drawn in question the validity of a statute of the State of Florida on the ground that said statute is repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity, notwithstanding your petitioner's contention that said statute violates the Thirteenth and Fourteenth Amendments to the Constitution of the United States and laws duly enacted in pursuance thereof.

[fol. 36] That therefore in accordance with section 237(a) of the Judicial Code, Section 344 of Title 18 of the United States Code, and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 28, 1928, was passed, to-wit, under Section 237(a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of errors, filed herewith, pursuant to Rule 9 and 46 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Supreme Court of Florida, the highest Court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the said Supreme Court of Florida may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of Florida, under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioner, that the supersedeas bond tendered by the petitioner be approved, and that the appeal thereupon operate as a supersedeas.

[fols. 37-38] This 12th day of August, 1943.

R. F. Maguire, W. H. Poe, Attorneys for Petitioner.

[fol. 39] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed August 16, 1943

Comes now Emanuel Pollock, the petitioner and appellant herein, in support of his petition for appeal herein, and assigns the following errors in the records and pro-

ceedings herein, as grounds for reversal of the decision and judgment of the Supreme Court of Florida:

I

The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Thirteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said Amendment to the Constitution of the United States.

II

The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Flor-[fols. 40-55] ida, was lawful and not in violation of petitioner's rights to the equal protection of the laws, and to due process of law.

III

The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to Section 56, Title 8, of the United States Code, formerly Section 1990, Revised Statutes of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's right under said section of the laws of the United States.

The statute aforesaid reads as follows:

> "Section 1. (Sec. 817.09, Fla. Stat. 1941). Obtain-property by fraudulent promise to perform labor or service.—Any person in this state who shall, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, pro-

cure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months. "Section 2. (Sec. 817.10, Fla. Stat. 1941). Same; prima facie evidence of fraudulent intent.—In all prosecutions for a violation of sec. 817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

Wherefore, on account of the errors hereinbefore assigned; petitioner prays that the said decision and judgment of the Supreme Court of Florida, dated July 24, 1943, in the above entitled cause (entitled H. T. Williams, as Sheriff of Brevard County, vs. Emanuel Pollock, in said Supreme Court of Florida) be reversed, and judgment entered in favor of this appellant.

This 12th day of August, 1943.

R. F. Maguire, W. H. Poe, Attorneys for Appellant.

[fol. 56] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—August 16, 1943

The petition of Emanuel Pollock, the above named appellant, who was appellee before the Supreme Court of Florida in the above entitled cause, for an appeal in said cause to the Supreme Court of the United States from the judgment of the Supreme Court of Florida, having been filed with the Clerk of this Court, and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated the 24th day of July, 1943, of the Supreme Court of Florida, as prayed in said petition, and that the Clerk of

the Supreme Court of Florida shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand, and the seal of said Court, a true copy of the material parts of the record herein, which [fols. 57-58] shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further Ordered that the said appellant shall give a good and sufficient supersedeas bond in the sum of Five Hundred ($500.00) Dollars, that said appellant shall prosecute said appeal to affect and answer all damages and costs, and perform and abide by the judgment of the Supreme Court of Florida rendered herein if he fails to make his plea good, and that said bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

Done and Ordered at Tallahassee, Florida, this 16th day of August, 1943.

Rivers Buford, Chief Justice of the Supreme Court of Florida.

[fols. 59-61] Supersedeas bond on appeal for $500.00 approved and filed Aug. 17, 1943 omitted in printing.

[fols. 62-67] Citation in usual form showing service on J. Tom Watson, filed Aug. 16, 1943, omitted in printing.

[fol. 68] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed August 18, 1943

Comes now the appellant and the appellee in the above styled cause, and stipulate and agree that, in making up the transcript on said appeal, the Clerk of the Supreme Court of Florida shall include therein the following:

1. Transcript of the Record of the Circuit Court of Brevard County, Florida, filed by the appellant on the appeal to the Supreme Court of Florida.

2. The opinion of the Supreme Court of Florida, dated July 24, 1943.

3. The final judgment of the Supreme Court of Florida, in said cause, rendered on the 24th day of July, 1943.

4. The petition for appeal to the Supreme Court of the United States.

5. The assignments of errors and prayer for reversal filed with said petition.

6. The jurisdictional statement filed with said petition.

7. The order of the Chief Justice of the Supreme Court [fol. 69] of Florida allowing said appeal, and fixing the amount and terms of the supersedeas bond.

8. The supersedeas bond and the endorsement of approval thereon.

9. The citation, with the acknowledgment of service endorsed thereon.

10. The statement in compliance with paragraphs 2 and 3 of Rule 12 of the Rules of the Supreme Court of the United States, with the acknowledgment of service endorsed thereon.

11. This stipulation.

12. Certificate of the Clerk.

It is further stipulated and agreed that the foregoing describes all of the papers and records necessary to a determination of the appeal herein.

R. F. Maguire, W. H. Poe, Attorneys for Appellant. J. Tom Watson, Attorney General of the State of Florida, and Attorney for Appellee. John C. Wynn, Assistant Attorney General.

[fol. 70] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 71] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed September 20, 1943

Comes now the appellant and adopts his assignments of error as his statement of the points to be relied upon, and

represents that the whole of the record, as filed, is necessary for the consideration of the case.

This September 18, 1943.

R. F. Maguire, W. H. Poe, Attorneys for Appellant.

STATE OF FLORIDA,
County of Orange:

W. H. Poe personally appeared before the undersigned Notary Public and, after being duly sworn, stated that, on September 18, 1943, he mailed by United States mail a copy of the foregoing statement to J. Tom Watson, Attorney General of Florida, and attorney for the appellee, at his office in Tallahassee, Florida.

W. H. Poe.

Sworn to and subscribed before me this 18th day of September, A. D. 1943. Kathleen Boyd, Notary Public, State of Florida at large. My commission expires May 4, 1946. Bonded by American Surety Co. of N. Y. (Seal.)

[fol. 71½] [File endorsement omitted.]

[fol. 72] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 25, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Endorsed on cover: File No. 47,838. Florida, Supreme Court. Term No. 345. Emanuel Pollock, Appellant, vs. H. T. Williams, as Sheriff of Brevard County, Florida. Filed September 11, 1943. Term No. 345, O. T. 1943.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 345

EMANUEL POLLOCK,

Appellant,

vs.

H. T. WILLIAMS, as Sheriff of Brevard County, Florida.

APPEAL FROM THE SUPREME COURT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

R. F. Maguire,
W. H. Pou,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 345

EMANUEL POLLOCK,

Appellant,

vs.

H. T. WILLIAMS, AS SHERIFF OF BREVARD COUNTY, FLORIDA.

JURISDICTIONAL STATEMENT.

Comes now Emanuel Pollock, petitioner and appellant herein, pursuant to Rule 12 of the Rules of the Supreme Court of the United States, and insupport of his petition for an appeal to the Supreme Court of the United States from the Supreme Court of Florida in the above styled cause, states:

I.

Jurisdiction of this appeal is sustained by Section 237(a) of the Judicial Code of the United States, being Section 344(a) of Title 28, of the United States Code.

II.

The validity of Chapter 7917, Laws of Florida, 1919 (Volume I, page 286), re-enacted as Sections 817.09 and 817.10 of the Revised Statutes of Florida, 1941 (Volume I, pages not numbered), is involved, and the decision and judgment of the Supreme Court of Florida, the highest court of the State of Florida, was in favor of the validity thereof, notwithstanding the contention of the appellant that said statute is repugnant to the Thirteenth and Fourteenth Amendments to the Constitution of the United States, and laws duly enacted thereunder. The said statute is set forth verbatim in paragraph VI hereof.

III.

The decision and judgment in question was made and entered on July 24, 1943, and the application for appeal is presented on the 16th day of August, 1943.

IV.

This case originated in the Circuit Court of Brevard County, Florida, on habeas corpus after the conviction of appellant and his commitment to jail for a term of 60 days.

The point, and the only point, presented and considered by the Circuit Court of Brevard County, Florida, and the Supreme Court of Florida, was whether whether or not the statute aforesaid under which the appellant was convicted and committed was repugnant to applicable provisions of the Constitution and laws of the United States. No State question was raised or decided, or according to the belief of appellant, exists, adequate to sustain the decision and judgment of Supreme Court of Florida, if the said decision and judgment are erroneous on the questions of Federal Law raised by the petition for, and the return to, the writ of habeas corpus. The judgment of the Supreme Court

of Florida was a final and complete judgment in favor of the validity of the said statute, and, unless reversed by the Supreme Court of the United States, nothing remains to be done except to remand the appellant to the custody of the appellee for the execution of the remainder of the sentence aforesaid, and said judgment cannot be reversed, annulled, modified or corrected except upon review by the Supreme Court of the United States.

V.

The appellant relies upon the following cases to sustain the jurisdiction of the Supreme Court of the United States in this cause:

Holmes v. *Jennison*, 14 Peters 540;
Ex. Parte Milligan, 4 Wall. 2;
Bailey v. *Alabama*, 219 U. S. 219.

Appellant relies upon the following cases to show that a substantial Federal question is presented:

Bailey v. *Alabama*, 219 U. S. 219;
Taylor v. *Georgia*, 315 U. S. 25.

VI.

This cause was commenced by petitioner in the Circuit Court of Brevard County, Florida, by a petition for the issuance of a writ of habeas corpus, to be directed to the appellee, H. T. Williams, as Sheriff of Brevard County, Florida, commanding him to produce the body of the petitioner before said court and show the cause of the detention of the petitioner. It was alleged in the petition (R. 1-3) that the appellee, as ex-officio keeper of the jail of said County unlawfully restrained petitioner of his liberty in violation of the Constitution of the United States and laws duly enacted pursuant thereto; that the restraint was under a pretended commitment from the County Judge's Court

in said County, purported to be based upon a judgment of conviction and sentence for a pretended violation of Chapter 7917, Laws of Florida, 1919, now Sections 817.09 and 817.10 of the Florida Statutes, 1941, which statute reads as follows:

> "Section 1. (Sec. 817.09, Fla. Stat. 1941). Obtaining property by fraudulent promise to perform labor or service. Any person in this state who shall, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months.
>
> "Section 2. (Sec. 817.10, Fla. Stat. 1941). Same; prima facie evidence of fraudulent intent. In all prosecutions for a violation of sec. 817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

The petitioner further alleged that said statute is and was repugant to the 13th and 14th Amendments to the Constitution of the United States, and Acts of Congress, particularly Section 56, Title 8, of the United States Code, duly enacted pursuant to said Amendments, and is void and of no effect, by reason whereof the County Judge's Court was without jurisdiction of the cause, and that the warrant charged no offense against the laws of the State of Florida, the judgment, sentence and commitment were void, and the imprisonment of defendant was illegal, and in violation of petitioner's right under the Constitution and laws of the United States.

The petition further alleged that at said trial petitioner did not know, and was not advised, of his right to counsel,

and was without funds and unable to employ counsel; that he did not understand the nature of the charge against him, but understood that if he owed any money to his prior employer and had quit his employment without paying the same, he was guilty, which facts he admitted; that thereupon a plea of guilty was entered of record, and judgment and sentence was thereupon pronounced upon him, all in violation of his rights under the Constitution and laws of the United States and the State of Florida. A copy of the warrant, plea and judgment was attached and made a part of the petition. The charging part of said warrant, which was dated January 2, 1943, was as follows:

> "C. W. Bates has this day made oath before me that on the 17th day of October, A. D. 1942, in this county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service, procure and obtain money, to-wit: the sum of $5.00, as advance from one J. V. D'Albora, a corporation" (R. 4).

The exhibits to said petition further showed that said warrant was executed on January 5, 1943, by taking petitioner into custody (R. 5), and that he was tried and pleaded guilty on the same day, whereupon the following judgment was entered by the County Judge of said county:

> "It is considered, ordered and adjudged that the defendant is guilty as charged in the affidavit. Further ordered that said defendant do pay a fine of $100.00 to include costs of this case, and that in default of payment thereof he serve a period of 60 days in the County jail of Brevard County, Florida (R. 6).

The said record further shows that a commitment issued on said judgment on the same day. (R. 6).

The said Circuit Court, on January 11, 1943, issued a writ of habeas corpus (R. 7), addressed to the appellee,

requiring him to make due return to the writ on the same day, and if the petitioner was in his custody or control, to produce his body together with the cause of his detention and show cause why he should not be discharged therefrom. At said time, the appellee produced the petitioner, and gave as the cause of the detention and restraint the commitment from the County Judge's Court based upon the judgment and conviction as set forth in the petition. The return did not deny any of the allegations of fact in said petition (R. 8).

The Circuit Court, after hearing, adjudged the statute upon which the warrant, judgment and conviction was founded to be unconstitutional and void and the imprisonment illegal, and thereupon discharged the petitioner from the custody of the appellee (R. 9).

And appeal from said judgment was duly perfected to the Supreme Court of Florida by appellee (R. 10, 11), and on July 24, 1943, the Court pronounced its opinion and final judgment in said cause, and reversed the judgment of the Circuit Court aforesaid, holding that the imprisonment of the petitioner was lawful and consistent with the Constitution of the United States. The substance of the holding of the court was that the first section of the aforesaid statute of Florida was not in violation of the 13th Amendment to the Constitution of the United States, in cases where the second section was not brought into play by the introduction of testimony and use of the presumption of intent created by the second section, e.g., when the conviction is based upon a plea of guilty. The court did not discuss the alleged violation of the equal protection clause of the 14th Amendment to the Constitution of the United States, but the judgment necessarily overruled the claim of the petitioner grounded upon said clause.

By the aforesaid final judgment the Supreme Court of Florida has directed the Circuit Court of Brevard County, Florida, to vacate its judgment aforesaid, and to remand

the petitioner to the custody of the appellee for the execution of the sentence of the County Judge of said County.

That the Supreme Court of Florida is the highest court of the State of Florida in which a decision of this suit can be had.

That in said suit there is drawn in question the validity of a statute of the State of Florida on the ground that said statute is repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity, notwithstanding your petitioner's contention that said statute violates the Thirteenth and Fourteenth Amendments to the Constitution of the United States and laws duly enacted in pursuance thereof.

VII.

The opinion of the Supreme Court of Florida in said cause, and being the only opinion therein is, omitting caption, as follows:

Opinion.

Thomas, J.:

The appellee pleaded guilty of violating Section 817.09 Florida Statutes, 1941, and was held under a commitment when discharged upon a writ of habeas corpus by the circuit judge who had the conviction that the act offended the Constitution of the United States, presumably the Thirteenth Amendment prohibiting involuntary servitude. The act denounces as a misdemeanant "any person * * * who * * *, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service [procures] * * * money or other thing of value as a credit, or as advances * * *."

Better to present our observations on the matter involved we will give also the substance of a related statute, Sec-

tion 817.10 Florida Statutes, 1941, declaring that the "failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained • • • shall be prima facie evidence of the intent to injure and defraud."

The former was Section 1, the latter Section 2, of Chapter 7917, Laws of Florida, Acts of 1919.

This is not the first challenge of the act which has appeared in this Court. The identical matter was considered in *Phillips* v. *Bell*, 84 Fla. 225, 94 So. 699, where the court concluded that the portion of the law defining the crime was harmonious with the Thirteenth Amendment and observed, without deciding the point, that if the part referring to the prima facie character of certain evidence should be pronounced unconstitutional the ruling would not affect the remainder. The discussion was largely devoted to the applicability of the decisions of the Supreme Court of the United States in *Bailey* v. *State of Alabama*, 211 U. S. 452, 29 Sup. Ct. Rep. 141, 53 L. Ed. 278, and in another case of the same title reported in 219 U. S. 219, 31 Sup. Ct. Rep. 145, 55 L. Ed. 191, to the proposition under study.

We are inclined to adhere to our former decision, but we recognize our duty to defer to the decisions of the Supreme Court of the United States where the interpretation of the Federal Constitution is involved. Bearing in mind this obligation we will examine, in their order, the first and second cases of *Bailey* v. *Alabama* and *Phillips* v. *Bell*, *supra*, then determine the effect upon them of a recent opinion of the Supreme Court of the United States, *Ira Taylor* v. *State of Georgia*, *infra*.

In the first there was entertained a petition for habeas corpus in which the constitutionality of a law making it an offense "to enter into a contract • • • for service with intent to • • • defraud the employer, and, after thereby obtaining money • • • from such employer,

• • • and without refunding the money or paying for the property, to refuse to perform the service." An amendment made the "refusal or failure to perform without just cause prima facie evidence of the intent." The court considered these two features, one denouncing a fraudulent act and one providing a method of proof, together with a rule in Alabama preventing a person from testifying as to his motive. No testimony had been taken in the case and the question was the unconstitutionality of the act and the amendment on their face without regard to the practical application of the amendment and the local rule dealing with proof. This is apparent from the comment of the court: "When the case comes to trial it may be that the prosecution will not rely upon the statutory presumption, but will exhibit satisfactory proof of a fraudulent scheme, so that the validity of the addition to the statute will not come into question at all."

We think it very significant that the court remarked upon the lack of doubt that the offense defined could be made a crime. Gist of the decision, as we understand it was, summarizing, that the part of the law describing crime and the one providing for the presumption were not interdependent and that if, in the prosecution, the State did not resort to the latter the validity of the former would be unaffected.

The petitioner was remanded, tried and found guilty. The Supreme Court of Alabama affirmed the judgment and again the Supreme Court of the United States reviewed the case. It then appeared that the conviction of the defendant was obtained because of the operation of the amendment providing that refusal of the employee to perform was *prima facie* evidence of intent to defraud the employer. In their analysis the court stressed the possibility of conviction for crime simply because of a breach of contract and failure to discharge a debt. By such flimsy testimony could

the presumption of innocense be overcome. This was particularly true in view of the rule preventing a defendant from swearing that he intended no fraud.

It was the gist of the opinion that the statute designed to punish fraud became an instrument to compel service when the provision for *prima facie* evidence of guilt was brought into play, especially, as will be seen when we discuss *Taylor* v. *Georgia, infra*, when the defendant was prohibted from testifying about his purpose or intention. The court concluded that the Alabama law "in so far as it makes the refusal or failure to perform the act or service, without refunding the money or paying for the property *prima facie* evidence of the commission received [sic] of the crime which the section defines, is in conflict with the 13th Amendment, * * * and is therefore invalid."

From a perusal of both opinions the deduction is inevitable that the law denouncing the crime was not held in conflict with the Constitution until made so by invoking in a given case the rule with reference to *prima facie* evidence and that, standing alone, it was not invalid.

We reach now, in its turn, our own decision in *Phillips* v. *Bell, supra*, where the chief justice expressed the opinion, concurred in by the other members of the court, that the section of the Florida Statutes defining the offenses was not inharmonious with the Constitution of the United States. One feature of that controversy was common to the first *Bailey* case, no testimony appeared in the record and so there was no need to determine whether the second section, with regard to *prima facie* evidence, was invalid or whether the first could be invalidated by it. Incidentally, that characteristic is present in the instant case for, as we stated at the outset, the plea was guilty, hence no evidence was taken.

This Court drew attention to certain "material differences" between the first portions of the Alabama and Florida Statutes defining the crime and to the similarity of the

parts establishing the *prima facie* evidence rule, but the rationale of the case and of both decisions of the United States Supreme Court to which we have alluded was, we believe, the declaration of the validity of the first section of the act when not infected by employment of the second.

The question now is the effect upon these decisions of the one rendered by the Supreme Court of the United States in, *Ira Taylor* v. *State of Georgia*, 315 U. S. 25, 62 Sup. Ct. Rep. 415, 86 Law Ed. 615. Mr. Justice Byrnes by way of introduction stated that the "Appellant was indicted * * * for violation of [sections] 7408 and 7409, of Title 26 of the Georgia Code." Although the former defined as crime contracting to perform services "with intent to procure money * * *" and not to perform * * * to the loss and damage of the hirer; or after having so contracted, * * * [procuring] from the hirer money, * * * with intent not to perform such service, * * *" the latter provided that "Satisfactory proof of the contract," the procurement of the money, the failure to perform or failure to return the money and loss or damage to the hirer, should be "deemed presumptive evidence of the intent referred to in the preceding section."

Clearly he could not have been indicted for violation of the latter section and while we do not wish to appear hypercritical we draw attention to the phraseology because of the frequent use of the plural in the opinion. It is stated that appellant asserted by way of demurrer to the indictment that sections 7408 and 7409 "were repugnant * * * to the Thirteenth Amendment." After trial upon the evidence had resulted in a conviction a new trial was sought upon this ground and others.

The court held that "There was no material distinction between the Georgia statutes challenged there and the Alabama statute which was held to violate the Thirteenth Amendment in *Bailey* v. *Alabama*, * * *" (the second

case). The court disposed of the argument—it was the same as the one presented in the second *Bailey* case—that one section dealt with punishment of fraud and the other a rule of evidence, by announcing that the latter "actually * * * embodies a substantive prohibition which squarely contravenes the Thirteenth Amendment * * *." The conclusion was "that sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment * * *." It will be noted that there is no qualification such as appeared in the latter *Bailey* case where, to repeat, the Alabama Statute was declared invalid "*so far as it* [made] * * * *failure to perform* * * * without refunding the money * * * *prima facie evidence*" of guilt. (Italics supplied by us.)

In view of the unqualified declaration that both were unconstitutional our first impression was that we would recede from the construction we had announced in *Philips* v. *Bell*, *supra*. This was emphasized because of the resemblance of the Georgia Statute to ours and the finding that no essential distinction existed between the former and the law of Alabama. Thus the axiom "two things equal to the same thing are equal to each other" seemed not inappropriate and the Florida act would fall with that of Georgia, despite our view in *Phillips* v. *Bell* that "there [were] material differences between the Alabama statutes * * * and the Florida statute."

Upon reflection it seems, however, that it was not the aim of the court to revise in the Taylor decision what had been announced in the second *Bailey* case.

Plainly, in both, testimony had been introduced to establish those elements necessary to raise the presumption under the statute and it was especially found that without the aid of it conviction could not have resulted. It is mani-

fest, too, as in the later *Bailey* case, that the court was called upon to construe together the two sections and to determine the effect of one upon the other and of both upon the rights of the appellant. In these circumstances we are not convinced that the Supreme Court of the United States intended to declare both sections unconstitutional regardless of any state of facts that might be presented. In our zeal to follow the decisions of that high tribunal we cannot but believe that the decision in the *Taylor* case was confined to a situation there present. The section anent presumptive evidence had been relied upon to secure a conviction so that the court again had for determination the question of the constitutionality of the first section when the second was brought into play. Not being faced with that problem here we conclude that the first *Bailey* decision and ours in *Phillips* v. *Bell* are in accord and that they in turn are not in conflict with the rulings in the second *Bailey* case and *Taylor* v. *State of Georgia, supra.*

Reversed.

Buford, C. J. Terrell, Brown, Chapman, Adams and Sebring, J. J. Concur.

VIII.

Although the Supreme Court of Florida did not, in its opinion, refer to the contentions of appellant that the statute was repugnant to the 14th Amendment and Section 56 of Title 8, United States Code, those contentions were made in the petition for the writ of habeas corpus, were argued in the brief and orally, and were, in effect, overruled by the judgment of reversal.

WHEREFORE, appellant believes that the Supreme Court of the United States has jurisdiction of this appeal, that the

appeal ought to be allowed, and that the decision and judgment of the Supreme Court of Florida ought to be reviewed and reversed.

Respectfully submitted,

R. F. Maguire,
W. H. Poe,
Attorneys for Appellant.

(8059)

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 345.

EMANUEL POLLOCK, APPELLANT,

VS.

H. T. WILLIAMS, AS SHERIFF OF BREVARD COUNTY, FLORIDA, APPELLEE.

BRIEF OF APPELLANT.

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THOMAS T. PURDOM,
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TABLE OF AUTHORITIES CITED

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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 345.

EMANUEL POLLOCK, APPELLANT,

VS.

H. T. WILLIAMS, AS SHERIFF OF BREVARD COUNTY, FLORIDA, APPELLEE.

BRIEF OF APPELLANT.

OPINION DELIVERED BY THE COURT BELOW.

The opinion of the court below will be found reported as *Williams* v. *Pollock,* 14 So. 2d 700. The official report containing the opinion has not yet been printed and distributed.

JURISDICTION.

A complete jurisdictional statement has heretofore been filed and printed, and this Court, on October 25, 1943, noted probable jurisdiction and transferred the cause to the summary docket (R. 24). Jurisdiction is based upon Section 237(a) of the United States Code.

Briefly, the Supreme Court of Florida, the highest court of the State, has held that Chapter 7917, Laws of Florida, 1919, re-enacted and brought forward in Florida Statutes, 1941, as Sections 817.09 and 817.10,[1] is a valid and subsisting statute of the State of Florida, notwithstanding the contentions of the appellant, who has been convicted for a violation of said statute, sentenced to jail and imprisoned by virtue of said conviction, that said statute is repugnant to the Thirteenth Amendment to the Constitution of the United States,[2] and laws duly enacted

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[1]Chapter 7917, Laws of Florida, 1919, reads as follows:

"An Act to Provide a Penalty to be Imposed Upon Any Person in This State Who Shall, With Intent to Injure and Defraud, Obtain or procure Money or Other Thing of Value on a Contract or Promise to Perform Labor or Service and Prescribing a Rule of Evidence Governing Same.

"Be It Enacted by the Legislature of the State of Florida:

"Section 1. Any person in this State who shall with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding Five Hundred ($500) Dollars, or by imprisonment not exceeding six months.

"Sec. 2. In all prosecutions for a violation of the foregoing section the failure or refusal, without just cause to perform such labor or service or pay for the money or other thing of value so obtained or procured shall be *prima facie* evidence of the intent to injure and defraud.

"Sec. 3. This Act shall take effect immediately upon its passage and approval.

"Approved June 7, 1919."

[2]The Thirteenth Amendment reads as follows:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

thereunder, particularly Section 56, Title 8, of the United States Code,[3] and that said statutes, and the conviction and sentence thereunder, deny to him the equal protection of the laws and deprive him of his liberty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.[4] Under the circumstances, it is contended that this Court has jurisdiction.

Sections 817.09 and 817.10, Florida Statutes, 1941, are identical with Sections 1 and 2, respectively, of Chapter 7917, changing the reference to "foregoing section" contained in Section 2 above, to "§817.09."

STATEMENT OF THE CASE.

Pleadings and Proceedings.

The facts, so far as they are stated in the record are simple and brief. The appellant was arrested January 5, 1943 (R. 3), on a warrant charging as follows:

"C. W. Bates has this day made oath before me that on the 17th day of October, A. D. 1942, in this

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[3]Section 56 of Title 8, United States Code, reads as follows:

"The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any person as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

[4]Pertinent parts of the Fourteenth Amendment reads as follows:

"Section 1. * * * nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service procure and obtain money, to-wit: the sum of $5, as advance from one J. V. D'Albora, a corporation" (R. 3).

He was immediately, on the same day (R. 4), taken before the County Judge[5] of Brevard County, Florida. He admitted to the Judge that he owed his former employer some money and had quit work (R. 2). Thereupon, a plea of guilty was entered of record and, on the same day, he was adjudged guilty and sentenced to pay a fine of $100, and upon default in the payment thereof, to be confined in the County jail for a period of 60 days (R. 2). As he had no money (R. 4) he was thereupon committed to jail (R. 5).

It further appears, and is not denied, that the appellant was unable to employ counsel, did not know and was not advised concerning his right to counsel, none was furnished him, and he did not understand the nature of the charge against him, but understood that if he owed his former employer any money, and had quit his employment, he was guilty as charged (R. 2).

It is conceded by all parties that the affidavit and warrant were based upon Chapter 7917, Laws of Florida, 1919 (Sections 817.09 and 817.10, Statutes of Florida, 1941), heretofore quoted, which purport to make it a criminal offense to obtain money as a credit or advance, with an intent to injure or defraud, upon a contract or promise to perform labor or service, and further provides that proof of obtaining the money on such a promise, and the failure to perform the labor or service or repay

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[5]County judges are not required to be "learned in the law," and have jurisdiction in criminal cases where the punishment may not exceed a fine of $500 and imprisonment not exceeding six months in counties having no Criminal Court of Record. Brevard County has no Criminal Court of Record.

the money shall be *prima facie* evidence of an intent to defraud.

On January 11, 1943, the appellant filed a petition for a writ of habeas corpus alleging the foregoing facts and conclusions of law as grounds for his release from imprisonment. Upon issuance of the writ and the return thereto (R. 4, 5), the Circuit Court of Brevard County held the statute to be unconstitutional and discharged the appellant from the custody of the appellee (R. 5). Upon appeal to the Supreme Court, the judgment was reversed (R. 15), in accordance with the opinion filed in the cause (R. 9). This opinion held that the statute and sentence were valid.

Additional Facts.

As this Court held in *Bailey* v. *Alabama*, 219 U. S. 219, that the validity of the statute depends upon what can be done under it, rather than what was done, other facts may be inferred from the record, though not directly stated.

As the court observed in the Bailey case, it is not important that the appellant is a negro, other than to remind the court that members of that race nearly always are the objects and victims of such legislation. Generally, their improvidence and unconcern about anything but the present and the immediate future make them peculiarly receptive to offers of advances of money or credit, and this, with their usual inability to repay the money except by continuing their labor, their ignorance of the law and courts, as well as the lack of ready money to employ counsel, and the uneven struggle between them and their white employers before a jury, combine to make it much easier to compel them to continue in service against their will than it is to terrorize and force a white man into such a state of bondage. But the law, on its face, applies to all without regard to color, though we

seriously doubt that any white man has ever been convicted under it.[6]

That the appellant is ignorant and uneducated may be inferred from the fact that he signed the petition by his mark, being unable to write even his name, and from his allegations, under oath and not denied, that he was ignorant of his right to counsel, as well as of the nature of the charge against him and of his defense to it.

It may be inferred from the affidavit that the appellant began work for J. V. D'Albora, a corporation, on, or perhaps before, October 17, 1942, and on that date he became indebted to the corporation in the sum of $5; that on or about January 2, 1943, he quit his employment without paying the $5. Of course, the sum owing may have been more or less than that amount originally, and may have fluctuated from time to time, as such details are not important to the validity of a warrant or a trial under it. We say that the foregoing may be inferred, because, had the appellant obtained the money in October and had not performed any work until the next January, it is unlikely that the corporation would have waited so long to have had him arrested, or, having waited, would be stirred to such action at that late date. At any rate, the statute, as written, would apply to either state of facts, and the charge could have been proven under the warrant with like effect.

So, we have a state of facts which, under the statute, rendered the appellant guilty of the alleged offense, whatever his secret intent may have been. The possibility that a jury might have found him not guilty on proof of the existence of the contract and debt and his failure to work any longer, is no greater than in any other class of cases, so that the inducement to plead guilty to avoid a heavier sentence, and the coercion thus imposed on other ignorant laborers to continue their labor against their will in order to avoid a similar fate, was and is great, if not compelling.[7]

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[6]Our only reason for the doubt is the remarks of Judge Swayne to the Grand Jury, reported in 138 Fed. 686, 690.

[7]See footnote, page 12.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

Only three errors were assigned and all of them are urged here. They are as follows, but more logically arranged:

1. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Thirteenth Amendment to the United States Constitution and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said Amendment to the Constitution of the United States.

> Affirmatively stated: A statute that permits imprisonment for failure to perform a contract to labor encourages and maintains involuntary servitude, whether a provision making such failure *prima facie* evidence of an intent to defraud is or is not invoked in a particular case.

2. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to Section 56, Title 8, of the United States Code, formerly Section 1990, Revised Statutes of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said section of the laws of the United States.

> Affirmatively stated: A statute that permits imprisonment for failure to perform a contract to

labor, on which money has been advanced, is one made, or tending, to establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of persons as peons, in liquidation of a debt or obligation, and is null and void when enacted; and that the procedure in a particular prosecution is immaterial to the unlawfulness of a conviction under the statute.

3. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights to the equal protection of the laws, and to due process of law.

Affirmatively stated: A statute that is directed solely at those who contract to labor, and not at those who make other kinds of contracts, and who obtain advances, but fail to perform the contract, and which does not permit the punishment of the employer for obtaining the labor without paying for it, denies to laborers the equal protection of the laws, and a conviction under the statute denies due process of law; and due process in such cases is further denied by the conviction on a plea of guilty of an ignorant negro, uninformed as to the nature of the charge and his defense, and who is without money or counsel, the arrest, arraignment, so-called trial, conviction and commitment to jail all occurring on the same day.

ARGUMENT.

I.

The judgment of the Supreme Court should be reversed solely on authority of Taylor v. Georgia, 315 U. S. 25.

It is our view that the decision of this Court in *Taylor* v. *Georgia*, 315 U. S. 25, was erroneously interpreted by the Supreme Court of Florida, and that its judgment should be reversed on authority of that case.

It will be observed that the Supreme Court of Florida has held, and we think correctly, that so far as the question here is involved, there is no material difference between the first and second sections, respectively, of the Alabama statute (before the Court in *Bailey* v. *Alabama*, 219 U. S. 219), the Georgia statute (*Taylor* v. *Georgia*, *supra*) and the Florida statute, now under review.

It is true that, in *Bailey* v. *Alabama*, *supra*, the Court did not, in terms, hold the entire statute to be bad, though ample reasons for so holding were announced in the opinion. In *Taylor* v. *Georgia*, however, this Court not only stated that both sections were under attack, but used the plural term throughout the opinion, concluding:

> "We think that the sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment and to the Act of 1867, and that the conviction must therefore be reversed."

We do not assume, as does the Supreme Court of Florida, that this Court would inadvisedly use such positive and explicit terms, or, if only the second section was condemned, fail to indicate in the opinion, judgment or mandate, all of which are before us, that a new trial should be granted, as would be appropriate if the first section is valid, and the State officers should be of the opinion that

a conviction might be had without the aid of the statutory presumption.

It is, of course, solely within the knowledge of this Court whether the Supreme Court of Florida or appellant has correctly understood the scope of the decision in *Taylor* v. *Georgia;* but we believe that we should suggest that the Supreme Court of Georgia, upon receipt of the mandate of this Court, construed the decision as we do. In *Taylor* v. *State,* 19 S. E. 2d 267, the case was finally disposed of, by saying:

> "The Supreme Court of the United States having reversed the decision and judgment of this court (*Taylor* v. *State,* 191 Ga. 612, 13 S. E. 2d 647), affirming the judgment of the trial court, it is hereby ordered that such decision be vacated, and that the judgment of the superior court of Wilkinson County be reversed."

No leave or direction for a new trial was given or indicated. Indeed, it seems that the officials of Alabama must have given the same interpretation to *Bailey* v. *Alabama,* for, though a number of cases involving the statute reached the appellate courts of that State prior to the decision of this Court in 1911, we can find none since that date. While this is not conclusive that there has been no attempt to enforce the statute, it would seem that at least one case would have reached the appellate courts in 33 years, if the officers or courts believed that any remnant of the statute remains in force.

If we are correct in our conclusion, the remainder of this brief requires no consideration.

II.

A fair construction of the statute involved, in view of its context, history and operation, necessarily leads to the conclusion that the legislative intent and purpose, and its obvious use and effect, is to implement employers with an instrumentality of the state with which to establish, maintain and enforce, directly or indirectly, the voluntary or involuntary service or labor of peons, in liquidation of debts or obligations.

The State Court Decision.

Supreme Court of Florida did not hold second section severable

The Supreme Court of Florida did not attempt to avoid the Federal question by holding the second section unconstitutional, and that the Legislature would have enacted the first section alone, had it known that the second section was repugnant to the Constitution, rendering the latter severable and proper to be eliminated entirely from the act. Indeed, it could not logically reach such a result, when the Legislature has repeatedly, over a period of 52 years, reenacted it in various forms in its effort to avoid the effect of decisions of this Court and the State Supreme Court, but always embodied in it the basic idea that has been so repeatedly and plainly condemned.

The Supreme Court of Florida reached the conclusion that this Court has condemned the act only when the second section is "brought into play" in the formal trial of the case.

We can only construe this to be an attempt to apply the rule that a party can not be heard to challenge the invalidity of a statute where no provision of the statute which may be violative of the constitutional rights of others, or his rights under other circumstances, has been invoked against him. Such a rule exists;

Limitation of rule as to party entitled to challenge statute

but where the entire statute is unconstitutional, then he has the right to object to the application of any part of it to him, though the effect of the portion so applied to him does not otherwise violate any constitutional right. The Supreme Court of Florida has, in other cases, so held. *McSween* v. *State Live Stock Sanitary Board*, 97 Fla. 749, 122 So. 239, 65 A. L. R. 508. And this rule has also been recognized by this Court. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219.[8]

It follows then that if the first section of the act, standing alone, is unconstitutional, or both of the sections are unconstitutional, or if the presence of the second section renders the entire act unconstitutional, the imprisonment of appellant was unlawful.

Respective Contentions.

The appellant contends that the statute was passed with a distinct object and purpose, and its effect is, contrary to the positive prohibitions contained in the Thir-

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[8]The effect of the plea of guilty in this case can be no more than admission that, if the statute under which the charge was made is constitutional, the State could prove what the statute requires. We understand that, when the case of *Taylor* v. *Georgia* was argued at the bar, Mr. Justice Frankfurter commented that the only effect of the waiver of grounds for a new trial, based upon the merits, was to admit that, if the statute was constitutional, the State had sufficiently proved its case, and language implying the same conclusion is found in the opinion. Of course, we argue, that the unconstitutionality of the statute, the arrest, arraignment, conviction, sentence and imprisonment all on the same day, his helpless condition, his ignorance, lack of advice of counsel or friends, and the absence of a full explanation of the elements of the supposed crime, all combined to coerce the plea which was entered for, and not by, him, and that this plea is not, in fact, the admission of anything.

teenth Amendment and the Act of 1867,[9] whether the second section is ever formally relied upon in court against an accused, and regardless of whether it is declared valid or invalid by the courts of the State.

The appellant contends that it is not a case where two offenses, one valid and the other invalid, are combined in one act of the Legislature, or some incidental and unnecessary unconstitutional provision is engrafted into a statute having a valid object, purpose and effect, but that if the second section is disregarded, a criminal offense of different scope, affecting a distinctly different group, and having a different, though none the less unconstitutional effect, will emerge; and the appellant has been convicted of an offense never prescribed by the Legislature, and therefore has been deprived of his liberty without due process of law.[10]

The appellant also contends that the statute attempts to justify punishment for acts committed by laborers, while their employers, who may defraud them under like circumstances and by reason of an identical contract or promise, as well as others committing substantially the same acts, are not punished. And, also, that the statute deprives appellant and others of their freedom to contract and to work for whom they please, so long as they are indebted to a former employer, by reason of the fear of punishment, and is violative of the due process clause of the Constitution.

We understand that the contention of the appellee is grounded on the propositions (1) that the second section is unconstitutional and should be eliminated from the statute; (2) that the first section is an ordinary statute to punish the obtaining of property by false pretenses or

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[9]Section 56, Title 8, U. S. C.

[10]*Spraigue* v. *Thompson*, 118 U. S. 90; *Skinner* v. *Oklahoma*, 316 U. S. 535; dissenting opinion Justice Brandeis in *Nat. Life Ins. Co.* v. *U. S.*, 277 U. S. 508, 534, 535

promises, which the State is not required to extend so as to cover all persons who may obtain property in that manner; and (3) that because of his plea of guilty, the rule of evidence prescribed by the second section was not formally used against appellant in court.

The Decision of the State Court As Avoiding Unconstitutionality of Statute.

If we view the decision of the Supreme Court of Florida realistically, an appropriate syllabus would read about as follows:

> "If a defendant pleads not guilty to a charge of violating the statute, and stands trial, it is possible that the courts of Florida will not apply section 2 of the Act; but both sections may remain on the statute books, *prima facie* valid, even though the effect is to create fear in an employee, indebted to his employer, to the extent that he will endure involuntary servitude, or so operate on the mind of an ignorant and penniless prisoner as to coerce him into pleading guilty to a violation of the first section."

We shall again refer to this in connection with the Fourteenth Amendment. At present, we are concerned with the power and disposition of this Court in dealing with a situation thus presented by the State court and with arguments that we anticipate from the appellee.

In *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494, this Court said:

> "It is true that the interpretation put upon a tax law of a state by its supreme court is binding upon this court as to its meaning, but it is not true that this court in accepting the meaning thus given may not exercise its independent judgment whether with the meaning given, its effect would not involve a violation of the Federal Constitution."

More apt in this situation, perhaps, is the language in *St. Louis Southwestern R. Co.* v. *Arkansas*, 235 U. S. 350, where it is said:

"Upon the mere question of construction we are, of course, concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. We must regard the substance rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state."

The point which is our objective is illustrated in the case of *Henderson* v. *Wickham*, 92 U. S. 259 (cited in the second *Bailey* v. *Alabama*), where the State was held to have imposed a passenger head tax against steamship lines under the guise of only permitting its payment to avoid the giving of a large and continuing bond for each passenger. The court looked to the ordinary effect, rather than the form of the statute. And so, in *Bailey* v. *Alabama*, 219 U. S. 219, we find this language:

"We cannot escape the conclusion that, although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt; and judging its purpose by its effect, that it seeks in this way to provide the means of compulsion through which performance of such service may be secured. The question is whether such a statute is constitutional."

We must not overlook that we are concerned not only with the general language of the Thirteenth Amendment, though it is of wide and comprehensive scope, but with the Act of 1867, *supra*, which in terms prohibits the States from passing any statute that is made directly or indi-

rectly to establish, maintain or enforce voluntary or involuntary servitude for the payment of a debt.[11]

Supreme Court exercises independent judgment as to the effect of state statute on constitutional rights

The court, then, is concerned with the effect of the statute, and is not bound by the utterances of the State court which it might be contended, removes an unconstitutional clause, if the purpose of the act and the uses to which it may be put, notwithstanding the decision of the state court, is repugnant to the Thirteenth Amendment or the Act of Congress. This Court has independent jurisdiction to decide these questions, without being bound by the State decision.[12]

Supreme Court of Florida has not construed first section of statute

And, it must be clear that the Supreme Court of Florida has not attempted to construe the first section of the statute,[13] or determine the intent or purpose of the Legislature, or the uses and purposes to which the statute, with or without the second section, may be put, so there is nothing in

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[11]This point was particularly emphasized in *U. S.* v. *Reynolds*, 235 U. S. 133, 148, 149, holding that where these provisions are involved, the Supreme Court must look to the effect of the State statute, and exercise its judgment, independent of the decision of the State Court. Significantly, it was said:

> "If such state statutes, upon their face, or in the manner of their administration, have the effect to deny rights secured by the Federal Constitution, or to nullify statutes passed in pursuance thereto, they must fail."

[12]*Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173; *Scott* v. *McNeal*, 154 U. S. 34; *Truax* v. *Corrigan*, 257 U. S. 312.

[13]"The controlling construction of the statute is the affirmance of this judgment of conviction." *Bailey* v. *Alabama; Taylor* v. *Georgia.* The Supreme Court of Georgia had held that the Georgia statute required proof of an initial fraudulent intent. The Florida court has not done, and can not do, more. This construction does not rescue the statute from its plain object and effect, the creation of such fear as will overcome any desire, fraudulent or innocent, of a citizen to exercise his right to work for whomsoever he pleases.

these respects which even purport to be binding on this Court.

Unconstitutional section is in pari materia and is to be considered in ascertaining intent of legislature

Not only may all preceding statutes on this subject be considered in construing Section 1, but even after holding Section 2 to be unconstitutional, the court may read it in construing it, in order to determine whether it, too, is repugnant to the Constitution or Act of Congress. To refuse to give force and validity to an act, or a section of an act is one thing; to refuse to read or consider it is quite another. To "strike out" a section as unconstitutional means merely to refuse to enforce it, and does not obliterate it from the books and from the mind and memory of mankind. *Baird* v. *Hutchinson*, 179 Ill. 435, 53 N. E. 567; *Board of Comrs.* v. *State*, 184 Ind. 418, 111 N. E. 417.

Legislative intent and purpose, as well as effect of statute is to violate 13th Amendment and Act of 1867

If, then, we construe the whole act, or the first section alone, in the light of the second section, it is inescapable that the legislative intent and purpose, and the obvious effect of the statute, are to place in the hands of an employer, a weapon, powered by the force of the State, by which he can "establish, maintain and enforce" voluntary or involuntary servitude in liquidation of a debt or an obligation.

The Supreme Court of Florida has not held the second section to be void and severable. But if it had so held, but upheld the first section as valid and subsisting, it would merely have put out of action some of the accessories with which the weapon was

To hold first section valid and second section invalid merely reduces but does not destroy repugnancy to Constitution and Act of Congress.

equipped to facilitate its use, and there would remain enough to coerce those most susceptible to unlawful use of such a law, the ignorant, improvident and helpless laborer. It does not suffice merely to impair the effectiveness of the statute, particularly that portion alone that would only operate *in camera* against the better informed victim with a little money, who refuses to be coerced, and stands trial, prepared to continue the litigation to the highest courts. To rescue the statute from its conflict with the Thirteenth Amendment and the Act of 1867 would require a construction not merely limiting, but entirely eliminating the effect or use contrary to those provisions, which as we see it, would not only frustrate the obvious legislative intent, but would destroy every vestige of the statute. The Supreme Court of Florida has not so construed the statute, and its decision is therefore error.[14]

Total eradication of statute only effective remedy

History of Legislation.

The original statute of 1891, as will hereafter appear,[15] did not make a conviction depend upon an infer-

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[14]Suppose a person desires to borrow money with every intention of repaying it. The lender, being in need of labor, will not make the loan unless the borrower agrees to work it out. The latter falsely promises to work in order to get the money, but retains his intent to repay it and does repay it when it is due to be paid. Disregarding the second section, and considering only the first, would not the borrower be guilty of its violation, assuming the statute to be valid, without regard to the manner in which the charge is proved? And if this is true, it is clear that the statute actually is designed to punish the breach of a contract to labor, because, had the subsidiary promise been to repay in potatoes or some other species of property, there would have been no violation, and in either case, if there was an intent to repay in money, no other statute of the State of Florida would be violated.

[15]See page 23.

ence from a statutory rule of evidence, but made the abandonment of the service without first repaying the money an element of the offense.[16] Fourteen years afterwards this Court, in *Clyatt* v. *U. S.*, 197 U. S. 207, made it clear that such an act was invalid.

The lawmakers, by that statute, thus placed a powerful weapon in the hands of employers, calculated at once to handle with strong hand, and to insure servile obedience from, the poor, ignorant and helpless, white or black; a system calculated to establish and perpetuate long hours, low wages, and sub-standard living and working conditions; in other words, a condition of peonage.

The statute complemented the commissary and trade coupon system, which was rendered innocuous by Chapter 6914, Laws of 1915. Under that system, laborers employed by plantations, naval stores operators, lumber and phosphate companies, rarely ever received any money, and were always in debt, because they were paid, usually in advance, in coupons or "script" redeemable only in goods purchased at the commissary.

There was a great labor shortage in the State during the period immediately before and after 1891. In *"Florida,"* by George M. Chapin, page 558, it is said:

> "There was a call for labor far greater than the supply in some parts of the state, especially

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[16]It is not reasonable to suppose that this, and the later statutes, were passed merely to punish frauds. Chapter 1637, Laws of 1868, now section 817.29, Florida Statutes of 1941, makes the commission of "gross fraud or cheat at common law" a crime, and in 1891, Section 50 of Chapter 1637, Laws of 1878, and in 1919, Chapter 6807, Laws of 1915, now section 817.01, Florida Statutes, 1941, were in force, making it a crime to obtain money or property by false pretenses. While permitting punishment by fine or imprisonment in the county jail, all of these statutes permit punishment by not more than ten years imprisonment in the State prison, and are therefore not within the jurisdiction of the county judge. Constitution, Art. V, Sec. 17, Florida Statutes, 1941, Sec. 36.01.

for the development of the phosphate mines which became commercially important about 1890. The result was a proposition to sell the convict labor. Its acceptance would bring an income to the state instead of an annual deficit, and eventually the state prisoners, white and black, male and female, were transferred to lessees, who employed them in the phosphate mines and in turpentine and lumber camps throughout the state."

Other histories show that about the same time there was a great deal of railroad expansion, and the turpentine, or naval stores, industry became important, with the exhaustion of great sources of these products in Georgia and other pine growing states of the Southeast.

Power to lease State and County convicts had existed since 1877. With the shortage of labor, this became an important and cheap source of surplus labor, and the system continued until power to lease to private persons was withdrawn at the extraordinary session of the Legislature in 1918.

These industries then had two sources of cheap labor, the convicts and those held by the fact that they were always in debt to their employers. But there was no way of preventing the free labor from running away to railroad and other jobs where they could receive cash for their labor.

By passing the statute of 1891, this problem was simplified for the other industries. As long as the laborer was satisfied with his condition, all was well. If, however, he became independent, and left in search of another job, the employer sent a warrant for him,[17] he was convicted and leased back to the employer. After

[17]Of course, a warrant charging any crime would serve the purpose; but there was always risk involved in trumping up a charge. The statute, however, was so framed that the negro was always guilty of its violation, making it convenient, and at least giving the employer and the officers a plausible excuse for their conduct if Federal Grand Juries became inquisitive.

serving his sentence he and his fellow workers were compelled to be content, for without doubt, the living condition of the free labor was, in some respects, better than the convicts.

After the repeal of the leasing system in 1918, this statute increased in importance. And, as will appear later, the existing statute similar to that of 1891 having been held unconstitutional by the Supreme Court of Florida[18] less than three months before the convening of the 1919 session of the Legislature, something had to be done by these industries, as the labor shortage produced by the World War I had not yet been relieved. The statute under attack was the result.

After *Clyatt* v. *U. S.*, the language was modified, hoping that the courts, having stricken down this harsh beginning, would be satisfied that the Constitution had been vindicated and preserved, and concede half-a-loaf. The courts again frowned on this effort. Further altering the rigors of the enactment from time to time, but making it no less offensive, the present statute was finally evolved. The Attorney General virtually concedes that the second section of the statute is void, but he also virtually says that the Legislature, having cut out a little here and a little there of its original enactment, but, remaining of the same opinion still, would be satisfied with such crumbs of the original loaf as the court may ration to it. No doubt this is because the skeleton remaining will be almost as effective in frightening the ignorant negro laborer, as would the living body of the original statute.

Peonage was a system that was practiced in full vigor in Mexico until recently, and is not yet entirely obliterated there. The system was in effect in the Mexican territory that was incorporated into our Union, particularly in New Mexico. Its essential form consisted in the advance of a small sum of money or goods by a pro-

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[18]*Goode* v. *Nelson*, 73 Fla. 219, 74 So. 17.

posed employer of the peon, and a promise by the peon to work for the employer until the indebtedness should be paid. The relation, once having been established, was calculated to continue in perpetuity. Wages under the system were naturally meagre and barely sufficient for the peon and his family to exist, so that earnings were constantly balanced by additional advances, sometimes aided by curious methods of book-keeping, and as a result the peon still owed the debt after years of labor. The debt descended from father to son, the servitude being thus perpetuated through many generations. In addition, it became the custom that an employer no longer in need of the labor of the peon could assign his contract to another employer, and the peon was then obliged to work on the same terms for the other. Thus the system differed little from our system of African slavery as it existed prior to the Civil War, except for the fiction of a debt and a contract. In form, the servitude was voluntary; in fact, it was slavery.

The existence of this system in the territories was not the moving cause of the adoption of the Thirteenth Amendment, but the system, as well perhaps as the fear that it might spread throughout the former Slave States as a substitute for slavery, brought about the enactment of the Act of March 2, 1867, which is now Section 56, Title 8, United States Code, heretofore quoted, as well as Sections 444 and 445, Title 18, United States Code, also parts of the Act of March 2, 1867.[19]

That Act is valid under the Thirteenth Amendment, as it is a partial exercise of the power given to Congress

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[19]Section 444. Whoever holds, arrests, returns, or causes to be held, arrested or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Section 445. Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of section 444 of this title, shall be liable to the penalties therein prescribed.

by the Thirteenth Amendment. *Clyatt* v. *U. S.*, 197 U. S. 207; *Bailey* v. *Alabama*, 219 U. S. 219; *U. S.* v. *Reynolds*, 235 U. S. 133.

Cognate sections of the United States Code clearly indicate a firm determination of Congress to invalidate and prohibit any law, contract or Act that is calculated to promote involuntary servitude, whether voluntarily or involumtarily assumed. Title 8, Sections 41 and 43; Title 18, Sections 51, 52, 443 and 445.

Many States, not all of them in the South, have from time to time enacted statutes which attempt to punish those who do not desire to work, or seek to exercise their right to choose their employer. Some of these have been held void by the courts of the State; all have been stricken down by the Federal courts whenever and however they have been presented.[20]

Chapter 4032 1891 Such laws had been enacted in other States many years before 1891. In that year the Legislature of Florida passed Chapter 4032, heretofore discussed, which reads as follows:

> "That from and after the passage of this Act, any person in the State of Florida, who, by false promises and with intent to injure and defraud, obtains from another, any money or personal property, or any person who has entered into a written contract, with, at the time, the intent to defraud, to do or perform any act or service, and in consideration thereof, obtains from the hirer, money or other personal property, and who abandons the service of said hirer without just cause, without first repaying such money or paying for such personal property, shall be deemed guilty of misdemeanor, and on conviction thereof, shall be punished by a fine not less than five nor more than five hundred dollars, or by imprisonment

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[20]We are advised and believe that Florida is now the only State in which such a statute is upheld by the Courts and enforced by the officers.

in the county jail not less than thirty days, nor more than one year, or both fine and imprisonment."

The offense, as denounced by this section, consisted of a combination of two necessary elements, first, the obtaining of money or property upon a false promise to perform any act or service, and second, the abandonment of the service without just cause without restitution of what had been obtained.

In 1905, the Supreme Court of the United States decided *Clyatt* v. *U. S.*, *supra*, and attention was drawn to the subject, because the remarks of the court could lead to no other conclusion but that any person, including officers of the law, who attempted to enforce the statute would be guilty of violating Section 444, Title 18, aforesaid, as it then existed.[21]

Chapter 5678 1907 So in 1907, the Legislature enacted Chapter 5678, which read as follows:

"Section 1. That from and after the passage of this Act, any person in the State of Florida, who shall contract with another to perform, for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, or whoever, after having so contracted, shall obtain or procure from the hirer money or other thing of value, with intent not to perform such service, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not more than one thousand dollars or by imprisonment in the county jail not more than one year, or by both fine and imprisonment.

"Section 2. That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor or

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[21]This was also emphasized by the District Court, Northern District of Florida, the same year, in a charge to the Grand Jury, 138 Fed. 686.

service was to be performed, without good and sufficient cause, shall be deemed *prima facie* evidence of the intent referred to in the preceding section."

Then, in 1911, came *Bailey* v. *Alabama, supra*, holding a statute of Alabama, nearly identical in terms, especially as to the second section, unconstitutional. In an attempt to meet this situation, the Legislature in 1913, specifically repealed the 1907 Act by Chapter 6528, which

Chapter 6528
1913

read as follows:

"Section 1. Any person in this State who shall contract with another to perform any labor or service and who shall, by reason of such contract and with the intent to injure and defraud, obtain or procure money or other thing of value as a credit or advances from the person so contracted with and who shall, without just cause, fail or refuse to perform such labor or service or fail or refuse to pay for the money or other thing of value so received upon demand, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment for a period not exceeding six months.

"Section 2. That Chapter 5678, Acts of 1907, be and the same is hereby repealed."

It will be noted that this Act was almost identical with Chapter 5678, the Act of 1907, but omitted the section which authorized or created the presumption of intent to be drawn from the failure to perform the service or make restitution. It again made this failure a necessary element of the crime. One who obtained property under a contract to labor could avoid punishment by performing the labor or returning the property, though his original intent was to defraud.

In 1919 the Supreme Court of Florida, in *Goode* v. *Nelson*, 73 Fla. 29, 74 So. 17, held this Act void under authority of *Bailey* v. *Alabama, supra*.

Not dismayed, the Legislature tried again, for reasons heretofore stated. It passed Chapter 7917 at the Session of 1919, which is brought forward in Florida Statutes, 1941, as Sections 817.09 and 817.10, heretofore quoted, and which are the sections now under consideration.

Chapter 7917 1919

In this revision, the portions of the statute permitting the laborer to avoid prosecution by performing the service or restoring the property was eliminated and the provision relating to the presumption of intent to defraud for failure to do so was restored, in the very face of this Court's decision in *Bailey* v. *Alabama*. Doubtless the legislative intent was an attempt to avoid the effect of *Goode* v. *Nelson* by the elimination.

This legislative maneuvering is the key to the legislative intent. While it is recognized that the first section,[22] standing alone, exerts a tremendous coercive influence on the mind of an ignorant laborer, an occasional conviction where threats do not avail adds greatly as an example to others. Ease and certainty of conviction are therefore desirable, and to that end, the breach of the contract is the *factum probandum* in a prosecution under this, as well as all prior statutes.

In *Phillips* v. *Bell*, 84 Fla. 225, 94 So. 699, the Supreme Court of Florida refused to interfere with a conviction under this statute on a plea of guilty, basing the decision principally on the opinion of Mr. Justice Holmes in the first case of *Bailey* v. *Alabama*, 211 U. S. 452, and upon an erroneous view of the second case of *Bailey* v. *Alabama*, which error was made plain in the case of *Taylor* v. *Georgia*. The Supreme Court of Florida de-

Foundation for Phillips v. Bell

[22]It is, however, evident that the effect of the statute is identical, whether embodied in one, or two, sections; and the legislative purpose, as well as the effect of the statute, is the same in every form in which it has been enacted.

clined to hold the second section unconstitutional or pass upon it, because of the plea of guilty, as in the present case.[23]

Twenty years passed. The statute was re-enacted, without change, by the adoption of the general revision known as Florida Statutes, 1941. In 1943, the revision of 1941 was re-enacted, with corrections only of typographical errors, by Chapter 22000, Laws of Florida, 1943.

Re-enactments 1941 1943

At the 1943 session, after the decision of this Court in *Taylor* v. *Georgia*, a bill to repeal the statute was introduced in the Legislature, and passed the House of Representatives, but was held in a Senate Committee until the expiration of the session, and was never enacted.

Attempt to repeal statute

Thus, for a period of 52 years the Legislature has persistently maintained on the statute books an act which made the performance of the labor a component part of a crime, or prescribed a rule of evidence which must ordinarily result in a conviction for failure to labor in payment of a debt.

During that period, the statute has been enacted or re-enacted in one or the other of these forms no less than seven times, and the Legislature has at least once refused to repeal it. Four of these enactments were attempts to evade the effect of the then latest condemnation of the courts. None of the seven was an attempt to give effect to the constitutional principles announced in the cases, or showed any intent on the part of the Legislature to yield its views to those of the courts.

The First Case of Bailey v. Alabama.

Reliance has been placed upon certain remarks of Mr. Justice Holmes in the first case of *Bailey* v. *Ala-*

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[23]The court did not consider the coercive effect or the operation *in terrorem* of the statute, nor did the court consider the fact that a plea of guilty to a void statute is a nullity.

bama, 211 U. S. 452. Undoubtedly Mr. Justice Holmes said that the first section of the statute was an ordinary statute punishing false pretenses. The views of Mr. Justice Holmes are set forth at greater length in his dissenting opinion in the second case, 219 U. S. 219.

Compared with his many opinions in other cases upholding the rights and liberties of oppressed classes, the views of this distinguished jurist on the question involved were extraordinary. He adopted the narrow legalistic conception of the case, and ignored the realistic, oppressive and quite intentional effect and operation of such a statute.[24] Indeed, in the second case, the learned Justice quite frankly embraced the notion that nothing in the Constitution and Acts of Congress prohibited a State from making it a crime to violate a contract to work, with or without the element of obtaining money or property with intent to defraud.

Personal opinion of Mr. Justice Holmes

These, however, were the personal views of Mr. Justice Holmes, and of Mr. Justice Lurton who concurred in the dissent in the second case but was not a member of the court when the first case was decided. It is quite evident, both from the majority opinion of Mr. Justice Holmes and the dissenting opinion of Mr. Justice Harlan, in the first case, that the court refused to review the question because it was brought up prematurely, as a "short cut," rather than because the court was of the opinion that any part of the act was constitutional.

Reason for first Bailey decision

It is clear, then, that nothing was said in the first *Bailey* v. *Alabama* case that can be of any help here, and so far as the opinions of the Supreme Court of Florida are based upon it, they must be without support.

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[24]Mr. Justice Holmes receded somewhat from his views upon considering the practical effect of the statute in *U. S.* v. *Reynolds*, 235 U. S. 150.

The Second Bailey v. Alabama Case Compared with This Case.

After Bailey was convicted, his case was again brought to this Court. The facts were identical with those here, except that Bailey had the benefit of counsel in time to save proper exceptions to the charges of the court, while here Pollock was brought into court, in custody, surrounded by officials, without knowledge of his rights, and hurried to jail before anyone who could help him was aware of his plight.[25]

At the trial of Bailey the court charged the jury that the failure to perform the service, refund the money or return the property was *prima facie* evidence of the intent to injure or defraud. This, it is argued, distinguishes the case in an attempted application of it here, as the State did not find it necessary to use the presumption because of the plea of guilty in this case.

In approaching the question to be decided, this Court said:

> "While, in considering the natural operation and effect of the statute, as amended, we are not limited to the particular facts of the case at the bar, they present an illuminating illustration. We may briefly restate them. Bailey made a contract to work for a year at $12 a month. He received $15, and he was to work this out, being entitled monthly only to $10.75

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[25]Whether this plea of guilty may be treated as a reality may be seriously doubted. As the return did not dispute the facts alleged, and the Circuit Court held the statutes unconstitutional, no evidence was offered or heard. It is not the practice in Florida, except in special cases or circummstances, to hear testimony when no issue is raised by the pleading. The mental duress in this case should at least avoid the implication that the appellant admitted more than the debt and his failure to continue at work or pay the debt. *Waley* v. *Johnson*, 316 U. S. 101. Cf. *Lisenba* v. *California*, 314 U. S. 219. Or, that, the State could prove its case, if the Statute was valid, *Taylor* v. *Georgia*, *supra*.

> of his wages. No one was present when he made the contract but himself and the manager of the employing company. There is not a particle of evidence of any circumstance indicating that he made the contract or received the money with any intent to injure or defraud his employer. On the contrary, he actually worked for upwards of a month. His motive in leaving does not appear, the only showing being that it was without legal excuse and that he did not repay the money received. For this he is sentenced to a fine of $30 and to imprisonment at hard labor, in default of the payment of the fine and costs, for 136 days. Was not the case the same in effect as if the statute had made it a criminal act to leave the service without just cause and without liquidating the debt? To say that he has been found guilty of an intent to injure or defraud his employer, and not merely for breaking his contract and not paying his debt, is a distinction without a difference to Bailey."

So here, in considering the natural operation and effect of the statute, the Court should conceive such a case. In testing the constitutionality of the statute, the court should assume that the same state of facts occurred here, or could well happen in other cases with the same result to the individual concerned. Indeed, the petition and warrant allege facts almost identical.

In discussing another statute of different form, previously held unconstitutional by the Supreme Court of Alabama, this Court said:

> "But, judging it by its necessary operation and obvious effect, the fundamental purpose plainly was to compel, under the sanction of the criminal law, the enforcement of the contract for personal service, and the same purpose, tested by like criteria, breathes despite its different phraseology through the amendments of 1903 and 1907 of the statute here in question."

So here, though the Legislature has adopted different phraseology, the fundamental purpose still breathes in the present statute.

The contention of appellee, of course, was, and is here, that the statute was designed for the salutary purpose of punishing fraud, and that the Legislature naturally was innocent of any design to compel involuntary servitude. But this Court said:

> "We cannot escape the conclusion that, although the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt; and judging its purpose by its effect, that it seeks in this way to provide the means of compulsion through which performance of such service may be secured. The question is whether such a statute is constitutional."

And, it cannot be doubted that the statute is no less compelling because here and there an ignorant defendant pleads guilty, hopeful of merciful consideration by the justice of the peace or county judge,[26] because, as this Court has held, the invalidity of the statute is grounded on its effect and operation before or without a prosecution; and this effect is to compel involuntary servitude in liquidation of a debt. Thus, it is not material what may or may not happen in those rare instances where the laborer refuses to be driven into peonage, but submits to arrest and prosecution.

Reason for pleas of guilty. Unlawful effect before arrest

Further, considering the effect of the statute, it was said:

> "If the statute in this case had authorized the employing company to seize the debtor, and hold him to the service until he paid the $15 or had furnished the equivalent in labor, its invalidity would not be questioned. It would be equally clear that the state

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[26]These officials, not required to be lawyers, have jurisdiction of misdemeanors in Florida.

> could not authorize its constabulary to prevent the servant from escaping, and to force him to work out his debt. But the state could not avail itself of the sanction of the criminal law to supply the compulsion any more than it could use or authorize the use of physical force. 'In contemplation of the law, the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station.' *Ex parte Hollman*, 79 S. C. 22, 21 L. R. A. (N. S.) 249, 60 S. E., p. 24, 14 A. & E. Ann. Cas. 1109."

The court also discussed the effect of such a statute upon the usual and ordinary victim of it:

> "What the state may not do directly it may not do indirectly. If it cannot punish the servant as a criminal for the mere failure or refusal to serve without paying his debt, it is not permitted to accomplish the same result by creating a statutory presumption which, upon proof of no other fact, exposes him to conviction and punishment. Without imputing any actual motive to oppress, we must consider the natural operation of the statute here in question (*Henderson* v. *New York* [*Henderson* v. *Wickham*], 92 U. S., p. 268, 23 L. Ed. 547) and it is apparent that it furnished a convenient instrument for the coercion which the Constitution and the act of Congress forbids; an instrument of compulsion peculiarly effective as against the poor and the ignorant, its most likely victims. There is no more important concern than to safeguard the freedom of labor upon which alone can enduring prosperity be based."

It was unnecessary for the court to specifically declare all of the Act unconstitutional in order to reverse the judgment, and the final conclusion was so limited. It is evident, however, that none of the statute met with the favor of the court.

There, as here, was an indirect attempt to compel the performance of a contract to labor, by

Invalidity due to threat, not trial

threatening fine and imprisonment. This is the necessary fact, even though those who reason legalistically and close their eyes to practical matters, may argue that the first section standing alone is a mere statute prohibiting fraud, because no reasonable man may suppose that anyone could be convicted if he makes a contract to work, draws money in advance and then performs the work, whether the second section is valid or not.[27] It is idle to say that someone, sometime, may have an intent to defraud and procure an advance, after which he repents and does the work, but nevertheless he will be prosecuted and convicted under the statute. The guaranties of the Constitution may not be frittered away by imagining a hypothetical case that every reasonable person knows will never occur. The last paragraph of the opinion quoted finds support in this reasoning.

Punishment for initial fraudulent intent, followed by performance, unreasonable

The Taylor vs. Georgia Case Compared With This Case.

The facts in the case of *Taylor* v. *Georgia*, 315 U. S. 25, are practically the same as here, except that the defendant was tried by a jury and was convicted after the court had charged the jury that it might consider the presumption of intent.

We have heretofore quoted the conclusion of this Court. But after stating that the second section of the act itself embodies a substantial prohibition which

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[27]But one who, innocent of an intent to defraud, promises to work and obtains a loan, and fails to do the work, is put in jeopardy, and may be convicted without the aid of the presumption, so that prudence compels him to work against his will, lest he be prosecuted and perhaps be convicted under this statute. The presumption increases his danger, but its absence does not remove it.

squarely contravenes the Thirteenth Amendment, the court continues:

> "The necessary consequence is that one who has received an advance on a contract for services which he is unable to repay is bound by threat of penal sanction to remain at his employment until the debt has been discharged. Such coerced labor is peonage. And it is no less so because a presumed initial fraud rather than a subsequent breach of the employment contract is the asserted target of the statute."

Possible success of statute without trial is gravamen of invalidity

So again this Court has drawn attention to the fact that it is the possible success of the statute in the intimidation of the worker, coercing him to work against his will,[28] thereby making a judicial application of the statute, or either section of it, unnecessary, is the circumstance that renders it void, rather than the actual arrest and conviction, however obtained. As the statute is void by reason of its object and purpose before the first prosecution is ever attempted under it, there could be no offense of which the appellant here could stand convicted, by the plea of guilty or otherwise. This is the necessary result of what the Court has said in the second case of *Bailey* v. *Alabama* and in *Taylor* v. *Georgia*.

Statute void in its inception

Independent Nature of Question Involved.

We have heretofore cited the authorities holding that this Court, in deciding questions arising under the Constitution and laws of the United States is not bound by decisions of the State courts as to the real effect of State statutes.

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[28]As the coercion, however accomplished, whether by lawful or unlawful means, is the element so clearly prohibited, then it is immaterial whether the asserted target of the statute is presumed or a real initial fraud. The Act of 1867 prohibits the State from becoming an accessory to the crime of peonage.

The question presented here may be said to approach one *sui generis*. Ordinarily if a state court construes a statute so that it does not conflict with the Constitution of laws of the United States, however strained or unreasonable the construction, the decision is binding upon the Federal courts. It is, however, our position that only by construing this statute not to exist, may this rule apply.

We have here a constitutional and national statutory prohibition that deals with practical effects. It deals with coercion, with guns, stockades and violence, it is true; but equally prohibited is coercion through fear,[29] poverty, ignorance, and other physical and metaphysical forces that may be employed to bring about the ultimate condition sought to be prohibited. This prohibition is equally directed at individuals and the State. No amount of legalistic arguments, subterfuges, excuses or manipulation of rhetoric by individuals, legislatures, officers or courts can prevail in support of a statute which was passed with the intent and for the purpose of specifically enforcing contracts to labor, and the effect of which as originally written, and as it remains on the statute books, is to accomplish that unlawful object.

Coercion through fear of prosecution equal to fear of violence

Intent and purpose of legislation unlawful

Even though the Supreme Court of Florida has held that the presumption of intent was not actually used against the appellant because of his plea of guilty, nevertheless he was convicted under a warrant charging the violation of a statute that has no legal existence.

Statute has no legal existence

It is our contention, therefore, that if the Supreme Court of Florida had held the second sec-

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[29]The freedom from fear mentioned in the Atlantic Charter has not yet been written in binding treaties or completely embodied in the Constitution, but its terms, in part at least, abide in the guaranties of the Thirteenth and Fourteenth Amendments.

No decision of state court can revive statute totally void at inception

tion unconstitutional (which it has twice declined to do) and had held that it would be error to charge the second section to be the law, such a decision could not breathe life into this still-born statute, void from its inception by reason of the comprehensive language of the Act of 1867.

Separability of Statute.[30]

This Court, in *Taylor* v. *Georgia, supra*, clearly held that both sections of the statute contained positive prohibitions, repugnant to the Thirteenth Amendment and the Act of 1867. The Supreme Court of Florida was, therefore, in error in supposing that the warrant was not, and could not be, drawn under the second section. Of course, it could not be drawn under the second section with any intelligent effect, if the first section should be eliminated. On the other hand, it could not have the effect intended by the Legislature and the prosecutor without the second section. The physical and mechanical separation into two sections does not avoid the necessary conclusion that there is one object, one intent, one purpose and one effect only embodied in one statute or act of the Legislature. No actual or practical distinction can be drawn between the statute in its final form and in Chapter 5678, held void in *Goode* v. *Nelson, supra*.

These considerations forbid the separability of the two sections, even though the Court should agree that the Legislature would have passed the first section alone, had it known that the second was unconstitutional, the last supposition being unthinkable, because the Legisla-

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[30]It is, of course, our contention that the statute is obnoxious to the Thirteenth Amendment and the Act of 1867, even though the second section had never been enacted. Its vice and use was well illustrated by Judge Swayne in his charge to the Grand Jury, reported in 138 Fed. 686.

ture was bound to know that this Court had already definitely and decisively held it to be unconstitutional.

Legislative purpose not to require proof of fraud

The history of the legislation, the omission of the usual separability clause,[31] and a consideration of statutes *in pari materia*, contrasted with contemporary decisions of this Court and the Supreme Court of Florida all show that the Legislature never had any intention of passing any statute under which the State could not convict on bare proof of the breach of the contract to labor.

We have shown also, that, though the second section is conceded to be unconstitutional, it must be read with the first section if it sheds any light on the intention of the Legislature. If, by reading the two sections together, it is apparent that the intent, and the necessary effect, of the statute was to violate the Constitution and Act of 1867, then the legislative intent would not be accomplished by holding that the first section alone was valid, but becomes so altered in meaning as to accomplish no purpose, or a different purpose.

Legislative purpose not accomplished by upholding first section alone

Reading both sections together, it can not be doubted, especially in the light of prior enactments, that the Legislature intended to punish those who promise to work out a debt or advance, and run away before the indebtedness is liquidated, and thus to provide the employer with means of intimidation in order to prevent such a "fraud." To strike down the entire act will no more certainly defeat the intent and purpose of the Legislature, than to strike down the second section.

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[31]The Legislature, at the same session, enacted separability clauses in connection with Chapters 7891, 7901 and 7936, showing the practice to add such clauses where separability was intended.

Rule of elimination does not apply where entire legislative purpose unlawful

The rule for which the appellee contends is applied in cases where the Legislature has attempted to accomplish a lawful purpose, but through an erroneous interpretation of incidental limitations of the Constitution, has included ancillary provisions, not vital to the legislative objective, which are invalid. But the rule does not extend to cases where the legislative object is violative of the Constitution. It is not the duty of the courts, and they will not, eliminate a section so as to change it into a statute having a lawful object, any more than they will introduce a new section to produce such a result.[32]

Supreme Court will not create new statute or permit State Court to do so in order to justify imprisonment

And, in the exercise of its ultimate and final jurisdiction on Federal questions, this Court will not recognize any interpretation by a State court that will result in the imprisonment of a citizen of the United States under a statute having an object and purpose forbidden by the Constitution and a valid act of Congress, and when such interpretation substitutes what is, in effect, a new and different statute from that enacted by the Legislature, because that would not be due process of law.

The only solution, it seems to us, is for the courts to hold this vicious statute unconstitutional in its entirety, and remit to the Legislature the task of writing a new statute, if one is needed and desired, to punish actual frauds, stripped of any purpose or possibility of its use to establish or maintain peonage or involuntary servitude.

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[32] *Neutzel* v. *Williams*, 191 Ky. 351, 230 S. W. 942.

III.

The statute, and particularly the first section, denies the equal protection of the law and due process of law to appellant and to all in a like situation.

Result of Upholding Conviction.

If the judgment of the Supreme Court of Florida is affirmed, the result will be that, although Bailey, Taylor and Pollock lived in different States, they were "guilty" of doing identical acts, which acts were governed by identical statutes so far as the cases are concerned, and two of them are free and the other will be imprisoned. This result will not be produced by the errors or caprice of juries, but by operation of law. Certainly, as a practical matter, Pollock will be denied the equal protection of the law and due process of law. As this Court has hitherto looked to the practical effect of these statutes, we feel justified in asserting that he is denied these rights in legal contemplation, by the decision of the Supreme Court of Florida.

Again looking at the effect of the statute, stripped of the second section, and regarding it realistically and practically, only those who violate it and confess may be convicted, unless juries are permitted to convict on proof similar to that recognized by the second section, in which case the innocent may also be convicted by juries who are willing to reject the protestations of a negro whose conviction is sought by a white man.

Even though every person charged with violating the statute is guilty, they are not deprived of the right to object to the enforcement of it, if the inevitable effect is to convict those who confess, and free those who maintain

Guilty entitled to equal protection and due process

silence. The guilty are entitled to the equal protection of the laws and to due process to the same extent as the innocent.[33] And when those who are ignorant of the significance of the phrase, "intent to injure or defraud" are induced to plead guilty, their attention being drawn to the debt and their failure to pay it by work or otherwise, and especially if the second section should be read to them, then it seems to us that the plainest terms of due process of law are violated. The fact that the statute is so phrased as to permit and encourage this use of it is convincing that the statute itself deprives the accused of due process, rather than the acts of officers and courts who enforce it.

We have not very seriously urged the proceedings in the original trial court as grounds for the appellant's release. In Florida the statute does not require counsel to be furnished to the accused at county expense, except in capital cases,[34] but he is entitled to be heard by counsel.[35] The record here shows that appellant did not know, and was not advised, of his right to be represented by counsel, and he was not given time to try to procure counsel if he had been so advised, as he might have done though he was at the time without funds. This may not, of itself, be sufficient to show a denial of due process of law. *Betts* v. *Brady*, 316 U. S. 455.

But it ought to be sufficient to prevent the legalistic view of his plea of guilty which was adopted by the Supreme Court of Florida, and should assist him in his contention that the statute is so framed as to deny due process of law to others and that if actually so operated in his case.

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[33] *Hill* v. *Texas*, 316 U. S. 400.

[34] Fla. Stat., 1941, Sec. 909.21.

[35] Declaration of Rights, Sec. 11.

Equal Protection of the Law.

It is a well settled rule that in legislating against evil, it is not necessary that all evils be punished, nor is it necessary that a particular evil be fully, completely and entirely abated. Doubtless appellee will argue that, although there may be many frauds not punishable by the criminal law,[36] this fact does not prevent the Legislature from singling out one for punishment. This will be conceded, but the implication that the rule is applicable here will be denied.

It is also a settled rule that the Legislature may classify individuals and things, and adopt or fail to adopt particular laws applicable to one or more of the classes, and different laws, or no law, applicable to the others. This will also be conceded, but likewise its application to the situation here will be denied.

We suppose appellee will concede that the Legislature must provide that the same law shall be applicable to all within a class, if it chooses to legislate at all, where the life, liberty or property of any is to be adversely affected. The problem, then, is to determine whether the classification has been reduced below its lowest terms. If so, the statute is void.

The appellee has contended that the sole purpose, a wholesome purpose, innocent of any guile, oppression or caprice, is to punish fraud accomplished in a particular manner. The point to be argued, however, under this question is whether the Legislature may single out from all of the false promises that are made, only those based upon a contract to perform labor or service, punishing them and leaving others unpunished.

Anyone who obtains money or anything of value as a credit or advance under a contract or promise to perform labor or service, with intent to injure and defraud, is deemed guilty of a misdemeanor. If however, he prom-

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[36]This is not true in Florida. See footnote 16, page 15.

ises, with like intent, to deliver goods and obtains money or advances on the false promise, he is not punished. If he falsely tells his grocer that he has a contract to perform labor or service for someone else, and that he will pay for the groceries that he is buying out of the proceeds of such pretended employment, he is guilty of no offense under this statute. And if his employer obtains his labor or service under a contract to pay him, with the intent to injure and defraud him, the employer is guilty of no crime.

The inhibitions of the Fourteenth Amendment on State legislation have been discussed at length in the case of *Connelly* v. *Union Sewer Pipe Co.*, 184 U. S. 540. This case has been followed by the Supreme Court of Florida in striking down a statute which required street car companies to provide separate compartments for negroes and whites, but providing that the Act should not apply "to colored nurses having the care of white children or sick white persons." *State* v. *Patterson*, 50 Fla. 133, 39 So. 400. Arguments as cogent and forceful could be devised to show that there were as good reason for allowing colored nurses in the white compartments while not permitting white nurses in the colored compartment, as can be made for prosecuting laborers who defraud their employers, while leaving unmolested employers who defraud their employees, or either who defraud others by the same tokens.

Very similar statutes were held to offend against the Fourteenth Amendment by the District Court of South Carolina in *Ex parte Drayton*, 153 Fed. 986, and by the District Judge in Alabama, in *Peonage Cases*, 123 Fed. 686. In some respects, the statutes involved in those cases differed from the one under consideration, but as to the point presented, these differences are not material.

The Supreme Court of South Carolina, in the case of *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19, 21 L. R. A. (N. S.) 242, was very much impressed by the point, but finally decided to give the Legislature the benefit of the doubt,

because, on account of the situation of the South Carolina planters, who might suddenly be bereft of their labor in the midst of a crop season if there was no way of holding them, there might be some grounds for applying the law to farm laborers and not to others who might breach their contract.

If, however, the appellee should prevail on the first question presented in this brief, he will be deprived of any comfort from this case. The very foundation of his argument is that the statute is designed only to punish fraud, and not to coerce labor. As the statute does not coerce farm labor, and farm labor only, then the basis for the classification found by the South Carolina court does not exist here. The statute here seems not to be limited to agricultural labor, but applies to labor or service of any kind. And, if the appellee is able to sustain his position on this question on the ground that the South Carolina court found for supporting the classification, must he not fail on one of the other grounds on which that court declared the Act unconstitutional?

The South Carolina court, however, considered also the question whether there was discrimination against an employee by punishing him for defrauding the employer, but did not punish the employer for defrauding the employee under a like contract. The court held that the Fourteenth Amendment was violated, saying:

> "But, even if this statute provided punishment only for fraud in such contracts, it violates the 14th Amendment to the Constitution of the United States, and Article I, Sec. 5, of the State Constitution, in that it does not bear equally on the landlord and the laborer. The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it. Here, the laborer is to be punished for his refusal to perform the service after receiving advances, while no punishment is provided for the landlord who may receive in advance the laborer's service and refuse to pay his wages."

In the case of *State* v. *Armstead*, 103 Miss. 798, 60 So. 778, Ann. Cas. 1915B, 495, the Supreme Court of Mississippi, as one ground for invalidity of the statute under review, observed that it was intended to punish the laborer, renter or share cropper, while nothing in the law was aimed at the other party to the contract.

We do not know what the appellee will say are the facts that support the legislative attempt at classification. We say that, before the classification can be sustained, the court must be convinced that some of the following reasons are sound:

(1) That laborers and servants are more likely to defraud than are other people.

(2) That employers are more liable to be defrauded, or suffer more from fraud, than other people.

(3) That helpless employers are in greater need of protection from fraudulent laborers than are the more powerful and opulent employees in need of protection from their employers.

It is quite true, at this time, in 1891, and when the present Act was passed in 1919, that employers are and were in need of more laborers than are or were obtainable, and use and used various devices to retain those employed, and to entice those of their neighbors. We do not doubt that this is a good reason, and the only reason that can be found, to support the classification. But the moment this reason is conceded, the true import of the statute becomes apparent. It is simply a scheme whereby the employer induces the laborer to accept a small advance, thereafter paying him in full each pay day, and then, when other employment is offered, the laborer is afraid to accept it, if he does not have enough cash to pay what the employer says that he owes. So the only reason that can logically be assigned to justify the classification leads to conflict with the Thirteenth Amendment.

We say then that, upon whichever horn of the dilemma the appellee chooses to be cast, the result is the same. The statute must violate either the Thirteenth or the Fourteenth Amendment to the Constitution of the United States.

Due Process of Law.

The appellant claims that his imprisonment under the sentence imposed will deprive him of his liberty without due process of law, because the statute upon which it was based is unconstitutional and repugnant to the Act of Congress, in one or all of the particular heretofore discussed. But that is not all.

Nature of liberty protected by the Constitution

Liberty, protected by the Fourteenth Amendment is not so restricted as to apply only to imprisonment in the jails and prisons of the State or county. This Court defined the term, as used in that Amendment, in the case of *Allgeyer* v. *Louisiana*, 165 U. S. 578, in the following words:

> "The liberty mentioned in that Amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

If this statute interferes with, or prevents, this appellant from giving up present employment and seeking work elsewhere under what he deems to be better conditions or

wages, merely because he owes his present employer a trifling sum, or even a large sum, or he must suffer imprisonment, then he is deprived of his liberty, without due process of law, even though he continues work rather than suffer imprisonment.

And how can it be argued that the statute does not so operate? It has so affected appellant. Similar statutes would have so affected Bailey and Taylor had this Court not interposed to prevent it.

It follows that the statute, considered as a whole or in parts, is so framed and is so operating that, if permitted to be effective, it deprives the appellant and others in like situations, of their liberty without due process of law. If the statute is thus itself in conflict with the Constitution, it is void for all purposes; so that the manner in which it has deprived appellant of his physical liberty is unimportant.

Conclusion.

We are quite sure that this brief is too lengthy; yet, when we attempt to shorten it, we cannot decide, what to omit, for, if the Court entertains doubts, we do not know what they are, and if the decision goes against us, we would not be content if we had not urged every argument that has occurred to us on the cleavage of opinion. We shall now summarize our contentions.

The entire history of the legislation, from 1891 until the last Act in 1919, shows a studied and deliberate purpose to compel a man to perform his contract to work. It is possible that there are a few cases where a dishonest person agrees to work for another without any intentions of doing so, and on the strength of his promise, obtains an advance to the loss of the trusting would-be employer. Although the State is under no obligation to protect those whose trust in their fellowmen survives painful expe-

rience, it is within the power of the Legislature to punish a fraud, if it employs constitutional means.[37]

This Court, in every case that has come before it involving this subject, has approached it in realistic manner. It has not permitted itself to be deceived by pretenses as to the intent of the Legislature as false as those claimed to be punished. Arguments that a statute was intended to punish fraud have been of no avail in defense of it, when it is designed directly or indirectly to force a citizen to labor for another, even though he originally, by contract, consented or bound himself to do it. Of course, there are limits to the prohibitions as to legislation, though there are none as to the acts of the individual. Any criminal statute may be used as a threat by which one individual may coerce another into working for him. That might be blackmail or peonage or conspiracy by an individual or individuals, not invalidating the statute. But where the statute deals with labor or services, especially in connection with a debt, the courts have brushed aside technical rules of construction and decided whether it may be conveniently used as an instrumentality in enforcing involuntary servitude. If the statute is appropriately designed for such a purpose, it is unconstitutional.

It is not thought that this Court held the presumption in the Alabama and Georgia statutes to be invalid as unreasonable rules of evidence, and beyond the power of the Legislature to enact, but were void because of the subject matter to which they were to be applied.[38] The

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[37]These cases are so rare that we cannot reasonably assume that the legislature was moved by them in passing this legislation. Considered in connection with the legislative history, we cannot close our eyes to the unconstitutional object of the statute. Moreover, such rare cases could be punished under existing law.

[38]*James Dickenson Farm Mortgage Co.* v. *Harry*, 273 U. S. 119.

baggage was contaminated by the vehicle carrying it, and its removal would not purify the vehicle.

The whole legislative trend has been an attempt to do indirectly what has been demonstrated, from time to time, cannot be done directly. This purpose has, in our judgment, been ill concealed. It shows that the Legislature, with the decisions of the highest court before it, deliberately placed in the hands of venal employers, aided perhaps by well meaning officers, an instrument whereby the ignorant, helpless and improvident may be compelled to work for such employers so long as an indebtedness, real or pretended may be maintained. The fact that this statute is, for the second time in twenty four years, challenged in an appellate court does not mean that it has not been used frequently for the purpose for which it was designed. The victims seldom, if ever, have the money to bring such cases to the attention of the appellate court, and infrequently have "white folks" been sufficiently interested in them to advance the money necessary to save them from a few weeks in jail, or if they have, a fine can usually be paid with less money, risk and trouble.

We assert that the judgment should be affirmed because the statute is invalid on the following grounds:

1. It directly or indirectly permits involuntary servitude to exist in the State of Florida, in violation of the Thirteenth Amendment to the Constitution of the United States, and Section 56, Title 8, United States Code.

2. It deprives the defendant, and others similarly situated, of the equal protection of the law, and of their liberty without due process of law, in violation of the

Fourteenth Amendment to the Constitution of the l
States.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1943.

No. 345

EMANUEL POLLOCK, *Appellant*,

Vs.

H. T. WILLIAMS, as Sheriff of Brevard County, Florida,
Appellee.

BRIEF OF APPELLEE

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Brief of Appellee

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Florida reversing the judgment of the Circuit Court of Brevard County, Florida (R. 9-14) is reported in .... Fla. ...., 14 So. 2d 700.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to hear and determine this case is not contested by the appellee, however, we call attention to the fact that appellant pled guilty to the criminal charge of violating Section 817.09, Florida Statutes 1941, and was not tried and convicted on this charge. (R. 4).

STATEMENT OF THE CASE

The appellant was charged by affidavit sworn out in the County Judge's Court of Brevard County, Florida, on October 17, 1942, with violating Section 817.09, Florida Statutes 1941, and on January 2, 1943, a warrant was issued thereon. (R. 3). The appellant was arrested under this warrant on January 5, 1943, by the Sheriff of Brevard County, Florida, (R. 3), and on the same date was brought before the County Judge's Court, pled guilty, and was sentenced to pay a fine of one hundred dollars and costs, and in default thereof to serve a period of sixty days in the County Jail, and a commitment issued. (R. 4). On January 11, 1943, appellant filed a petition for writ of habeas corpus in the Circuit Court of Brevard County, Florida, and on the same date an alternative writ of habeas corpus was issued. (R. 4). On January 11, 1943, a return to the alternative writ of habeas corpus was filed by the Sheriff, who had the appellant in custody, and on the same date the Court entered its judgment discharging the appellant (R.5). An appeal was then taken by the appellee here to the Supreme Court of Florida, and the judgment of the Circuit Court of Brevard County, Florida, was reversed (R. 15) in accordance with the opinion filed therein. (R. 9).

As we understand this case, the only question involved is the constitutionality of Section 817.09, Florida Statutes 1941. In appellant's brief under the heading, "Statement of the Case," he sets forth several matters which we consider immaterial to the issues involved. Appellant seeks to rely upon ignorance of the law, which is no defense to a criminal charge of this nature, and his claim to being illiterate is unsupported by the record, as it fails to disclose whether he is totally uneducated, or a

college graduate holding several degrees. Appellant also contends that he was unable to employ counsel, and that none was furnished him, however, under the law of the State of Florida counsel is furnished to indigent persons only where they are charged with a capital offense, and we note with interest that he did not proceed in forma pauperis in either the Circuit Court of Brevard County, the Supreme Court of Florida, or the Supreme Court of the United States.

Appellant further contends that he is a negro, and that members of his race are the objects and victims of the statute involved here, although a perusal of this statute fails to disclose any language making it applicable to any particular class, race, or creed of people, and the record utterly fails to disclose his race or color.

Appellant states that he doubts seriously if any white man has ever been convicted under this statute, and bases his doubt upon the *remarks of Judge Swayne to the grand jury* reported in 138 Fed. 686, 690. It would be impractical for us to attempt to determine the race or color of each and every person who has pled guilty to or been convicted under this statute, as the time and effort required would make it prohibitive; and we assume that for the same reason appellant has failed to advise himself in this respect and has resolved his doubt upon a fallacy. We have examined Judge Swayne's remarks to the grand jury, referred to by the appellant, and find they were made on May 23, 1905—fourteen years before the passage of the statute involved in this case—and also that they fail to disclose any reference whatsoever to negroes, but on the contrary refer to peonage committed against white persons.

The record in the case at bar utterly fails to disclose that the appellant was offered any inducement or was coerced to plead guilty, and it must therefore be presumed that his action in this respect was free and voluntary, in the absence of anything to the contrary.

The race, color, creed, literacy, and other immaterial matters which appellant in his brief attempts to inject into the case, are not involved here, and we submit that such matters should be given no consideration by this Honorable Court, as the only issue presented is the constitutionality of Section 817.09, Florida Statutes 1941. The record discloses no basis for appellant's inference that the statute only applies to a particular class of people, or that it is so applied by the Courts of Florida, and this latter aspersion cast upon the State courts is both unjustifiable and unwarranted.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED

The appellant has assigned as error the following:

1. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Thirteenth Amendment to the United States Constitution and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said Amendment to the Constitution of the United States.

2. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to Section 56, Title 8, of the United States Code, formerly Section 1990, Revised Statutes of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said section of the laws of the United States.

3. The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights to the equal protection of the laws, and to due process of law.

ARGUMENT

The statutes under consideration in this case were first enacted as Sections 1 and 2 of Chapter 7917, Acts of 1919, an original act of the Legislature, and not as an amendment to any existing statutes. Sections 1 and 2 of Chapter 7917, supra, were reenacted as Sections 817.09 and 817.10, Florida Statutes 1941, by Chapter 20719, Acts of 1941, adopting and enacting as the law of Florida a complete revision and compilation of all of the general statute laws of the State. These two Sections are now a part of Chapter 817, Florida Statutes 1941, consisting of 34 sections in all, i. e. 817.01-817.34.

Sections 817.09 and 817.10, Florida Statutes 1941, read as follows:

> "817.09 Obtaining property by fraudulent promise to perform labor or service.—Any person in this state who shall, *with intent to injure and defraud,* under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months. (Emphasis supplied).
>
> "817.10 Same; prima facie evidence of fraudulent intent.—In all prosecutions for a violation of §817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

The appellant contends that Sections 817.09 and 817.10 are interdependent, and that Section 817.10 is unconstitutional, and by reason thereof that Section 817.09 must also be declared unconstitutional. He cites no authority to support this contention, and we submit it has been foreclosed against him by the decision of the Supreme Court of Florida, in the case of *Phillips v. Bell*, 84 Fla. 225, 94 So. 699, where it was held that these sections were independent and that Section 817.09 would not be affected if Section 817.10 should be held unconstitutional; as the separability of State statutes or their dependence one upon the other involves no Federal question and is strictly a question to be decided by the State courts. The case of *Phillips v. Bell*, supra, was decided by the Supreme Court of Florida prior to the enactment of Florida Statutes 1941, and certainly, if these sections were independent of each other as two sections of the same Act of the Legislature, they must now more so be independent, for the reason that they have been reenacted as two sections of Chapter 817, Florida Statutes 1941. There is no more reason to say that Section 817.09 is dependent upon Section 817.10, than there is to say that either of these sections is dependent upon any or all of the other 32 sections of Chapter 817, Florida Statutes 1941.

These sections being independent of each other, Section 817.10 relating to a rule of prima facie evidence to establish fraudulent intent, is not involved in the case at bar, by reason of the fact that appellant entered a plea of guilty to the charge against him under Section 817.09.

Appellant infers that his plea of guilty in the trial court was entered under circumstances that would make the judgment thereon illegal, but we find this unsupported by the record, however, if such was the case his remedy was

by writ of error coram nobis. See *House v. State*, 127 Fla. 145, 172 So. 734. It is elementary that habeas corpus may not be substituted for writ of error coram nobis.

The appellant cites the case of *Taylor v. Georgia*, 315 U. S. 25, 86 L. Ed. 615, and relies upon it as authority for reversal of the case at bar. The statutes of the State of Georgia involved in the case of *Taylor v. Georgia*, read as follows:

> "7408. Any person who shall contract with another to perform for him services of any kind *with intent to procure money*, or other thing of value thereby, *and not to perform the service contracted for, to the loss and damage of the hirer;* or after having so contracted, shall procure from the hirer money, or other thing of value, *with intent not to perform such service, to the loss and damage of the hirer*, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.
>
> "7409. Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed; *without good and sufficient cause* and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section." (Emphasis supplied).

We submit that the case of *Taylor v. Georgia* can be distinguished from the case at bar for the reason that material differences exist between the provisions of Section 7408 of the Georgia Statute, and Section 817.09 of the Florida statute. The gist of the Georgia statute is the

subsequent failure of the defendant to perform the services contracted for, when such breach of contract results in a loss and damage to the hirer. The Georgia statute does not denounce as a crime the intent to defraud existing at the time an advance upon a contract is received, and the act of the defendant does not ripen into a violation of the Georgia law unless and until a failure to work results in a loss and damage to the hirer.

Under the Georgia statute, if an employee obtains a payment of twenty dollars from his employer under a contract to work twenty days at a daily wage of one dollar per day, and the employee obtains such advance of money with intent to work only ten days, then his employer could require him under threat of criminal prosecution to work the remaining ten days. Regardless of the intent of the employee at the time he obtained an advance under contract, if subsequently he performs his contract or repays to his employer the sum of money advanced, the Georgia statute would not be violated, because there would be no loss or damage resulting to the employer.

It therefore clearly appears that the Georgia statute seeks to make the loss or damage resulting to the employer a criminal offense against the employee, and whether or not the employee had an unlawful intent to defraud at the time he obtained the advance of money is immaterial.

Section 817.09, Florida Statutes 1941, is not afflicted with the infirmity of the Georgia statute. The guilt of the employee under the Florida statute rests squarely upon his unlawful intent to defraud at the time he obtained the advance of money, and whether or not the employer sustains a loss or damage by reason of breach of the contract is immaterial.

We submit, therefore, that the distinction between the Florida and Georgia statutes may thus be stated: The gist of the Florida statutes is based upon a present intent to defraud, and the gist of the Georgia statutes is based upon a subsequent breach of contract and failure to perform work, resulting in a loss or damage to the employer.

The case of *Taylor v. Georgia*, supra, can further be distinguished from the case at bar for the apparent reason that in the case of *Taylor v. Georgia*, the appellant pled not guilty, was tried and convicted for the violation of Section 7408 of the Georgia statutes, and by reason thereof, Section 7409 of the Georgia statutes providing for a rule of presumptive evidence was applied. Therefore, both of the Georgia statutes were involved in the case of *Taylor v. Georgia*, and each within itself being unconstitutional, consequently both were so held to be unconstitutional.

In the case at bar only Section 817.09 is involved as the appellant pled guilty to the charge thereunder, and the provisions of Section 817.10 relating to a rule of prima facie evidence were not invoked against him.

The first case of *Bailey v. Alabama*, 211 U. S. 452, cited by appellant, supports our position in the case at bar, as the Supreme Court of the United States, in affirming that case, said:

> "All that appears from the record with regard to the foundation of the case against him is that the plaintiff in error is held on a charge of having obtained money under a written contract with intent to defraud. There is no doubt that such conduct may be made a crime."

The first case of *Bailey v. Alabama* parallels the case at bar in that in neither case was the appellant tried upon

the charge against him and the prima facie evidence rule provided by statute invoked and applied. In the first *Bailey* case the appellant sued out a writ of habeas corpus prior to pleading to the charge against him, whereas in the case at bar the appellant pled guilty to the charge against him, and then sued out a writ of habeas corpus.

In the second case of *Bailey v. Alabama*, 219 U. S. 219, the appellant pled not guilty to the charge against him, upon trial the prima facie evidence rule was invoked and applied against him, and the trial court charged the jury as to this rule of evidence.

The only evidence adduced at the trial of the second case of *Bailey v. Alabama*, proved a breach of contract and there was a complete absence of proof of intent to defraud. Therefore, the State relied for conviction solely upon the statutory presumption, as under a rule of evidence enforced by the Courts of Alabama the appellant was not allowed to rebut the statutory presumption by testifying as to his motive, purpose, or intention, and the Supreme Court of the United States in deciding the case held that this rule must be read into the statute in construing its constitutionality; but such rule is not the law in Florida. See *Rountree v. State*, 113 Fla. 443, 152 So. 20.

Although the Alabama statute comprising one section, 4730 as amended, contained both the crime denounced and the rule of prima facie evidence, the Supreme Court of the United States in reversing the second *Bailey* case remanded it for further proceedings not inconsistent with the opinion, saying:

> "• • • and we conclude that §4730, as amended, of the Code of Alabama, in so far as it makes the refusal or failure to perform the act or service, with-

> out refunding the money or paying for the property received, *prima facie* evidence of the commission of the crime which the section defines, is in conflict with the Thirteenth Amendment and the legislation authorized by that Amendment, and is therefore invalid." (Text 245).

It clearly appears from the above quotation, that the only part of the Alabama statute held unconstitutional was that part which related to the prima facie evidence rule.

CONCLUSION

We conclude that the decision of the Supreme Court of the United States in the first case of *Bailey v. Alabama* and the decision of the Supreme Court of Florida in the case at bar, are in accord, and that the decision of the United States Supreme Court in the second case of *Bailey v. Alabama,* is also in accord with the decision of the Supreme Court of Florida in the case at bar, as the decision in the second *Bailey* case merely held that part of the statute relating to the prima facie evidence rule unconstitutional, recognizing that the act of obtaining money on a contract to perform work with intent to defraud may be made a crime by statute; and further that no irreconcilable conflict exists between the decision of the United States Supreme Court in the case of *Taylor v. Georgia* and the decision of the Supreme Court of Florida in the case at bar.

That Section 817.10, Florida Statutes 1941, providing for the prima facie rule of evidence, is not involved in the case at bar, and Section 817.09, Florida Statutes 1941, in clear and concise terms denounces as a criminal offense a

particular type of fraud, and is in no wise in conflict with the Thirteenth or Fourteenth Amendment to the Constitution of the United States. Fraud is not an uncommon crime, and in its various forms has been made a criminal offense in every jurisdiction of the United States. If Section 817.10, providing a rule of prima facie evidence, which is not involved here, is ever stricken down by the courts and declared unconstitutional, there exists no valid reason why Section 817.09, denouncing this crime should not stand unaffected thereby, as this criminal offense can be proven by evidence of a present intent to defraud at or before the time of the commission of the crime.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 345.—October Term, 1943.

Emanuel Pollock, Appellant, vs. H. T. Williams, as Sheriff of Brevard County, Florida. } Appeal from the Supreme Court of the State of Florida.

[April 10, 1944.]

Mr. Justice Jackson delivered the opinion of the Court.

Appellant Pollock questions the validity of a statute of the State of Florida making it a misdemeanor to induce advances with intent to defraud by a promise to perform labor and further making failure to perform labor for which money has been obtained *prima facie* evidence of intent to defraud.[1] It conflicts, he says, with the Thirteenth Amendment to the Federal Constitution and with the antipeonage statute enacted by Congress thereunder. Claims also are made under the due process and equal protection clauses of the Fourteenth Amendment which we find it unnecessary to consider.

Pollock was arrested January 5, 1943, on a warrant issued three days before which charged that on the 17th of October, 1942, he did "with intent to injure and defraud under and by reason of a contract and promise to perform labor and service, procure and obtain money, to-wit: the sum of $5.00, as advances from one J. V. O'Albora, a corporation, contrary to the statute in such cases made and provided, and against the peace and dignity of the State

[1] The Florida statute under which Pollock is held was enacted as Chapter 7917 of the Acts of 1919. It was re-enacted as §§ 817.09 and 817.10, Statutes of 1941, in the revision and compilation of the general statute laws of the State. It reads:

"817.09 Obtaining property by fraudulent promise to perform labor or service.—Any person in this state who shall, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months.

"817.10 Same; prima facie evidence of fraudulent intent.—In all prosecutions for a violation of § 817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

of Florida." He was taken before the county judge on the same day, entered a plea of guilty, and was sentenced to pay a fine of $100 and in default to serve sixty days in the county jail. He was immediately committed.

On January 11, 1943, a writ of habeas corpus was issued by the judge of the circuit court, directed to the jail keeper, who is appellee here. Petition for the writ challenged the constitutionality of the statutes under which Pollock was confined and set forth that "at the trial aforesaid, he was not told that he was entitled to counsel, and that counsel would be provided for him if he wished, and he did not know that he had such right. Petitioner was without funds and unable to employ counsel. He further avers that he did not understand the nature of the charge against him, but understood that if he owed any money to his prior employer and had quit his employment without paying the same, he was guilty, which facts he admitted." The Sheriff's return makes no denial of these allegations, but merely sets forth that he holds the prisoner by virtue of the commitment "based upon the judgment and conviction as set forth in the petition." The Supreme Court of Florida has said that "undenied allegations of the petition are taken as true."[2]

The Circuit Court held the statutes under which the case was prosecuted to be unconstitutional and discharged the prisoner. The Supreme Court of Florida reversed.[3] It read our decisions in *Bailey* v. *Alabama*[4] and *Taylor* v. *Georgia*[5] to hold that similar laws are not in conflict with the Constitution in so far as they denounce the crime, but only in declaring the *prima facie* evidence rule. It stated that its first impression was that the entire Florida act would fall, as did that of Georgia, but on reflection it concluded that our decisions were called forth by operation of the presumption, and did not condemn the substantive part of the statute where the presumption was not brought into play. As the prisoner had pleaded guilty, the Florida court thought the presumption had played no part in this case, and therefore remanded the prisoner to custody. An appeal to this Court was taken and probable jurisdiction noted.[6]

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[2] *State ex rel.* Libtz v. Coleman, 149 Fla. 28, 5 So. 2d 60.

[3] Williams v. Pollock, 14 So. 2d 700.

[4] 219 U. S. 219.

[5] 315 U. S. 25.

[6] — U. S. —.

Florida advances no argument that the presumption section of this statute is constitutional, nor could it plausibly do so in view of our decisions. It contends, however, (1) that we can give no consideration to the presumption section because it was not in fact brought into play in the case, by reason of the plea of guilty; (2) that so severed the section denouncing the crime is constitutional.

I.

These issues emerge from an historical background against which the Florida legislation in question must be appraised.

The Thirteenth Amendment to the Federal Constitution, made in 1865, declares that involuntary servitude shall not exist within the United States and gives Congress power to enforce the article by appropriate legislation.[7] Congress on March 2, 1867, enacted that all laws or usages of any state "by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise," are null and void, and denounced it as a crime to hold, arrest, or return a person to the condition of peonage.[8] Congress thus raised both a shield and a sword against forced labor because of debt.

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[7] "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

[8] The Act of March 2, 1867, 14 Stat. 546, reads:

"The holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State of the United States, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, be, and the same are hereby, declared null and void; and any person or persons who shall hold, arrest, or return, or cause to be held, arrested, or returned, or in any manner aid in the arrest or return of any person or persons to a condition of peonage, shall, upon conviction, be punished by fine not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one nor more than five years, or both, at the discretion of the court." The first part of the statute is now 8 U. S. C. § 56 (R. S. § 1990) and the criminal provision is § 269 of the Criminal Code, 18 U. S. C. § 444 (R. S. § 5526).

Clyatt v. *United States* was a case from Florida in which the Federal Act was used as a sword and an employer convicted under it. This Court sustained it as constitutional and said of peonage: "It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. . . . . Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. . . . A clear distinction exists between peonage, and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service."[9]

Then came the twice-considered case of *Bailey* v. *Alabama*,[10] in which the Act and the Constitution were raised as a shield against conviction of a laborer under an Alabama act substantially the same as the one before us now. Bailey, a Negro, had obtained $15 from a corporation on a written agreement to work for a year at $12 per month, $10.75 to be paid him and $1.25 per month to apply on his debt. In about a month he quit. He was convicted, fined $30, or in default sentenced to hard labor for 20 days in lieu of the fine and 116 days on account of costs. The Court considered that the portion of the state law defining the crime would require proof of intent to defraud, and so did not strike down that part; nor was it expressly sustained, nor was it necessarily reached, for the *prima facie* evidence provision had been used to obtain a conviction. This Court held the presumption, in such a context, to be unconstitutional.

Later came *United States* v. *Reynolds* and *United States* v. *Broughton*[11] in which the Act of 1867 was sword again. Reynolds and Broughton were indicted under it. The Alabama Code authorized one under some circumstances to become surety for a convict, pay his fine, and be reimbursed by labor. Reynolds and

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[9] 197 U. S. 207, 215-16 (1905).

[10] 211 U. S. 452 (1908), where held to be brought here prematurely, and 219 U. S. 219 (1911).

[11] 235 U. S. 133 (1914).

Broughton each got himself a convict to work out fines and costs as a farm hand at $6.00 per month. After a time each convict refused to labor further and, under the statute, each was convicted for the refusal. This Court said, "Thus, under pain of recurring prosecutions, the convict may be kept at labor, to satisfy the demands of his employer." It held the Alabama statute unconstitutional and employers under it subject to prosecution.

In *Taylor* v. *Georgia*[12] the Federal Act was again applied as a shield, against conviction by resort to the presumption, of a Negro laborer, under a Georgia statute in effect like the one before us now. We made no effort to separate valid from invalid elements in the statute, although the substantive and procedural provisions were, as here, in separate, and separately numbered, sections. We said, "We think that the sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment and to the Act of 1867, and that the conviction must therefore be reversed." Only recently in a case from Northern Florida a creditor-employer was indicted under the Federal Act for arresting a debtor to peonage, and we sustained the indictment. *United States* v. *Gaskin*.[13]

These cases decided by this Court under the Act of 1867 came either from Florida or one of the adjoining states. And these were but a part of the stir caused by the Federal Antipeonage Act and its enforcement in this same region.[14] This is not to intimate that this section, more than others, was sympathetic with peonage, for this evil has never had general approval anywhere, and its sporadic appearances have been neither sectional nor racial. It is mentioned, however, to indicate that the Legislature of Florida acted with almost certain knowledge in designing its successive "labor fraud" acts in relation to our series of peonage decisions. The present Act is the latest of a lineage, in which its antecedents were obviously associated with the practice of peonage. This history throws some light on whether the present state act is one "by virtue of which any attempt shall hereafter be made" to "enforce

[12] 315 U. S. 25 (1942).

[13] No. 68, this Term, decided January 3, 1944.

[14] See Peonage Cases, 123 Fed. 671; United States v. Eberhart, 127 Fed. 252; United States v. McClellan, 127 Fed. 971; In re Peonage Charge, 138 Fed. 686; Ex parte Drayton, 153 Fed. 986; Taylor v. United States, 244 Fed. 321.

involuntary servitude," in which event the Federal Act declares it void.

In 1891, the Legislature created an offense of two elements: obtaining money or property upon a false promise to perform service, and abandonment of service without just cause and without restitution of what had been obtained.[15] In 1905, this Court decided *Clyatt* v. *United States*, indicating that any person, including public officers, even if acting under state law, might be guilty of violating the Federal Act. In 1907, the Florida Legislature enacted a new statute, nearly identical in terms with that of Alabama.[16] In 1911, in *Bailey* v. *Alabama*, this Court held such an act unconstitutional. In 1913, the Florida Legislature repealed the 1907 act, but re-enacted in substance the section denouncing the crime, omitting the presumption of intent from the failure to perform the service or make restitution.[17] In 1919, the Florida Supreme Court held this act, standing alone, void

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[15] "Any person in the State of Florida, who by false promises and with the intent to injure or defraud, obtains from another, any money or personal property, or any person who has entered into a written contract, with, at the time, the intent to defraud, to do or to perform any act or service, and in consideration thereof, obtains from the hirer, money or other personal property, and who abandons the service of said hirer without just cause, without first re-paying such money or paying for such personal property, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not less than five nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than one year, or both fine and imprisonment." Florida Laws 1891, c. 4032.

[16] It provided:

"Section 1. That from and after the passage of this act any person in the State of Florida, who shall contract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, or whoever, after having so contracted, shall obtain or procure from the hirer money or other thing of value, with intent not to perform such service, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine of not more than one thousand dollars or by imprisonment in the county jail not more than one year, or by both fine and imprisonment.

"Sec. 2. That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor or service was to be performed, without good and sufficient cause, shall be deemed prima facie evidence of the intent referred to in the preceding section." Florida Laws 1907, c. 5678.

[17] "Section 1. Any person in this State who shall contract with another to perform any labor or service and who shall, by reason of such contract and with the intent to injure and defraud, obtain or procure money or other thing of value as a credit or advances from the person so contracted with and who shall, without just cause, fail or refuse to perform such labor or service or fail or refuse to pay for the money or other thing of value so received upon demand, shall be guilty of a misdemeanor and upon conviction thereof shall

under the authority of *Bailey* v. *Alabama*.[18] Whereupon, at the session of 1919, the present statute was enacted, including the *prima facie* evidence provisions, notwithstanding these decisions by the Supreme Court of Florida and by this Court. The Supreme Court of Florida later upheld a conviction under this statute on a plea of guilty, but declined to pass on the presumption section, because, as in the present case, the plea of guilty was thought to make its consideration unnecessary.[19] The statute was re-enacted without substantial change in 1941. Again in 1943 it was re-enacted despite the fact that the year before we held a very similar Georgia statute unconstitutional in its entirety.[20]

II.

The State contends that we must exclude the *prima facie* evidence provision from consideration because in fact it played no part in producing this conviction. Such was the holding of the State Supreme Court. We are not concluded by that holding, however, but under the circumstances are authorized to make an independent determination.[21]

What the prisoner actually did that constituted the crime cannot be gleaned from the record. The charge is cast in the words of

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be punished by a fine not exceeding five hundred dollars or by imprisonment for a period not exceeding six months.

"Sec. 2. That Chapter 5678, Acts of 1907, be and the same is hereby repealed.

"Sec. 3. That all laws in conflict with the provisions of this Act are hereby repealed." Florida Laws 1913, c. 6528.

[18] Goode v. Nelson, 73 Fla. 29, 74 So. 17. "As 'involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted,' is forbidden 'within the United States' by the Federal Constitution, a crime to be punished by imprisonment cannot lawfully be predicated upon the breach of a promise to perform labor or service." 73 Fla. at 32.

[19] Phillips v. Bell, 84 Fla. 225, 94 So. 699. In this case no reference was made to the prior decision of the Florida court in Goode v. Nelson, *supra* note 18.

[20] Florida Statutes (1941) §§ 817.09, 817.10; Florida Laws 1943, c. 22000, approved June 10, 1943. Taylor v. Georgia was decided January 12, 1942. 315 U. S. 25.

[21] "That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights. Thus, whenever a conclusion of law of a state court as to a federal right and findings of fact are so intermingled that the latter control the former, it is incumbent upon

the statute and is largely a conclusion. It affords no information except that Pollock obtained $5 from a corporation in connection with a promise to work which he failed to perform, and that his doing so was fraudulent. If the conclusion that the prisoner acted with intent to defraud rests on facts and not on the *prima facie* evidence provisions of the statute, none are stated in the warrant or appear in the record. None were so set forth that he could deny them. He obtained the money on the 14th of October, 1942, and the warrant was not sought until January 2, 1943. Whether the original advancement was more or less than $5, what he represented or promised in obtaining it, whether he worked a time and quit, or whether he never began work at all are undisclosed. About all that appears is that he obtained an advancement of $5 from a corporation and failed to keep his agreement to work it out. He admitted those facts and the law purported to supply the element of intent. He admitted the conclusion of guilt which the statute made *prima facie* thereon. He was fined $20 for each dollar of his debt, and in default of payment was required to atone for it by serving time at the rate of less than 9¢ per day.

Especially in view of the undenied assertions in Pollock's petition we cannot doubt that the presumption provision had a coercive effect in producing the plea of guilty. The statute laid its undivided weight upon him. The legislature had not even included a separability clause.[22] Of course the function of the *prima facie* evidence section is to make it possible to convict where proof of guilt is lacking. No one questions that we clearly have held that such a presumption is prohibited by the Constitution and the federal statute. The Florida Legislature has enacted and twice re-enacted it since we so held. We cannot assume it was doing an idle thing. Since the presumption was known to be unconstitutional and of no use in a contested case, the only explanation we can find for its persistent appearance in the statute

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us to analyze the facts in order that the appropriate enforcement of the federal right may be assured." Norris v. Alabama, 294 U. S. 587, 589. See Lisenba v. California, 314 U. S. 219, 236; Chambers v. Florida, 309 U. S. 227. "Even though the constitutional protection invoked be denied on non-federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded." Broad River Power Co. v. South Carolina, 281 U. S. 537, 540; Demorest v. City Bank Farmers Trust Co., No. 52, this Term, decided January 17, 1944.

22 The Florida legislature has made use of separability clauses where separability was the desire. See Florida Laws 1919, cc. ~~7803, 7804, 7936~~ 7808, 7936.

is its extra-legal coercive effect in suppressing defenses. It confronted this defendant. There was every probility that a law so recently and repeatedly enacted by the legislature would be followed by the trial court, whose judge was not required to be a lawyer. The possibility of obtaining relief by appeal was not bright, as the event proved, for Pollock had to come all the way to this Court and was required, and quite regularly, to post a supersedeas bond of $500, a hundred times the amount of his debt. He was an illiterate Negro laborer in the toils of the law for the want of $5. Such considerations bear importantly on the decision of a prisoner even if aided by counsel, as Pollock was not, whether to plead guilty and hope for leniency or to fight. It is plain that, had his plight after conviction not aroused outside help, Pollock himself would have been unheard in any appellate court.

In the light of its history, there is no reason to believe that the law was generally used or especially useful merely to punish deceit. Florida has a general and comprehensive statute making it a crime to obtain money or property by false pretenses[23] or commit "gross fraud or cheat at common law."[24] These appear to authorize prosecution for even the petty amount involved here.[25] We can conceive reasons, even if unconstitutional ones, which might lead well-intentioned persons to apply this Act as a means to make otherwise shiftless men work,[26] but if in addition to this general fraud protection employers as a class are so susceptible to imposition that they need extra legislation, or workmen so crafty and subtle as to constitute a special menace, we do not know it, nor are we advised of such facts.

We think that a state which maintains such a law in face of the court decisions we have recited may not be heard to say that

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[23] Florida Statutes (1941) § 817.01.

[24] Florida Statutes (1941) § 817.29.

[25] These statutes carry permissible maximum punishment such, however, that they may be prosecuted only in courts presided over by judges required to be lawyers and where presumably defendant's rights are more accurately observed. See Florida Constitution, Art. V, §§ 3, 17; Florida Statutes (1941) §§ 32.05, 33.03, 36.01.

[26] Dr. Albert Bushnell Hart in The Southern South, after reviewing and unsparingly condemning evidences of peonage in some regions, says, "Much of the peonage is simply a desperate attempt to make men earn their living. The trouble is that nobody is wise enough to invent a method of compelling specific performance of a labor contract which shall not carry with it the principle of bondage." P. 287.

a plea of guilty under the circumstances is not due to pressure of its statutory threat to convict him on the presumption.

As we have seen, Florida persisted in putting upon its statute books a provision creating a presumption of fraud from the mere nonperformance of a contract for labor service three times after the courts ruled that such a provision violates the prohibition against peonage. To attach no meaning to such action, to say that legally speaking there was no such legislation, is to be blind to fact. Since the Florida Legislature deemed these repeated enactments to be important, we take the Legislature at its own word. Such a provision is on the statute books for those who are arrested for the crime, and it is on the statute books for us in considering the practical meaning of what Florida has done.

In the view we take of the purpose and effect of this *prima facie* evidence provision it is not material whether as matter of state law it is regarded as an independent and severable provision.

III.

We are induced by the evident misunderstanding of our decisions by the Florida Supreme Court, in what we are convinced was a conscientious and painstaking study of them, to make more explicit the basis of constitutional invalidity of this type of statute.

The undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. Forced labor in some special circumstances may be consistent with the general basic system of free labor. For example, forced labor has been sustained as a means of punishing crime,[27] and there are duties such as work on highways[28] which society may compel. But in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. Resulting depression of working conditions and living standards affects not only the

[27] United States v. Reynolds, 235 U. S. 133, 149; Loeb v. Jennings, 133 Ga. 796, affirmed on other grounds, 219 U. S. 582; Dunbar v. Atlanta, 7 Ga. Appeals 434. Cf. Chicago v. Williams, 254 Ill. 360; Chicago v. Coleman, 254 Ill. 338.

[28] Butler v. Perry, 240 U. S. 328.

laborer under the system, but every other with whom his labor comes in competition. Whatever of social value there may be, and of course it is great, in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service. This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor. The federal statutory test is a practical inquiry into the utilization of an act as well as its mere form and terms.

Where peonage has existed in the United States it has done so chiefly by virtue of laws like the statute in question. Whether the statute did or did not include the presumption seems to have made little difference in its practical effect. In 1910, in response to a resolution of the House of Representatives, the Immigration Commission reported the results of an investigation of peonage among immigrants in the United States.[29] It found that no general system of peonage existed, and that sentiment did not support it anywhere. On the other hand, it found sporadic cases of probable peonage in every state in the Union except Oklahoma and Connecticut. It pointed out that "there has probably existed in Maine the most complete system of peonage in the entire country," in the lumber camps.[30] In 1907, Maine enacted a statute, ap-

[29] Report on Peonage, Abstracts of Reports of the Immigration Commission, Vol. II, p. 439, Sen. Doc. No. 747, 61st Cong., 3d Sess.

[30] The operation of the system is described as follows:

"In late years the natives who formerly supplied the labor for the logging concerns in that State have been engaged in the paper mills, and the lumber companies have been compelled to import laborers, largely foreigners, from other States. Boston is the chief labor market for the Maine forests. The employment agents misrepresent conditions in the woods, and frequently tell the laborers that the camps will be but a few miles from some town where they can go from time to time for recreation and enjoyment. Arriving at the outskirts of civilization the laborers are driven in wagons a short distance into the forests and then have to walk sometimes 60 or 70 miles into the interior, the roads being impassable for vehicles. The men will then be kept in the heart of the forest for months throughout the winter, living in a most rugged fashion and with no recreation whatever. A great many of them have rebelled against this treatment, and they have left their employers by the score. The lumbermen having advanced transportation and supplies have appealed to the legislature for protection. In February, 1907, a bill became a law making it a crime for a person to

> enter into an agreement to labor for any lumbering operation or in driving logs and in consideration thereof receive any advances of goods, money, or transportation, and unreasonably and with intent to defraud, fail to enter into said employment as agreed and labor a sufficient length of time to reimburse his employer for said advances and expenses.

plicable only to lumber operations but in its terms very like the section of the Florida statute we are asked to separate and save. The law was enforcible in local courts not of record. The Commission pointed out that the Maine statute, unlike that of Minnesota[31] and the statutes of other states in the West and South, did not contain a *prima facie* evidence provision. But as a practical matter the statute led to the same result.[32]

Judges in municipal courts and trial justices were given jurisdiction to try cases under this law, and the act provided that it would take effect immediately upon approval. When this bill was before the legislature, requests were made by citizens interested in factories and other industries that the provisions of the statute be made to protect all employers of labor. The attorney who introduced the bill on behalf of the lumber interests which he represented, has stated that he had refused to accede to these requests, inasmuch as he believed the provision should not be extended. The protection granted by the statute, therefore, was restricted to a favored class, persons interested in 'lumbering operations and in driving logs.'" Peonage Report, *supra* note 29, p. 447.

31 Minnesota Stat. (1941) § 620.64.

32 "There is no provision in the Maine statute that

> the failure or refusal of any employee to perform such labor or render such services in accordance with his contract or to pay in money the amount for such transportation or such advancement shall be prima facie evidence of his intent to defraud;

as appears in the contract-labor law of Minnesota and in the statutes of other States in the West and the South. However, justices of the peace in Maine have decided indiscriminately that, in order to obtain a conviction under the law of that State, it is necessary to show only that the laborer obtained the 'advances' and failed 'to labor a sufficient length of time to reimburse his employer.'

"A justice at Houlton, Maine, who is a lawyer by profession, told the attorney representing the peonage committee that he decided in cases brought under the contract-labor law that 'the burden of proof is upon the defendant,' who must show to the court 'beyond a reasonable doubt that he had no intent to defraud.' This justice added that once in a while if a laborer has a really good excuse he will let him off, as he believes 'every man has some rights, although he may be poor.' Another justice of the peace at Patten, Maine, stated that if it was shown that a laborer had obtained the advances and had not worked sufficiently to settle for them he found the defendant guilty without considering the question of intent to defraud. This seems to be the general attitude of the rural justices of Maine toward the contract-labor law.

"Considerable peonage has resulted from this statute. The law has been vigorously enforced. Soon after its passage prosecutions were commenced in the lumber regions, and the jail at Dover, the county seat of one of the large lumber counties of Maine, was crowded with laborers convicted of defrauding their employers out of 'advances of goods, money or transportation.'

"Involuntary servitude results in utilizing this statute to intimidate laborers to work against their will. On account of the vigorous methods pursued in enforcing the above-described law, it soon became known throughout the lumber region of Maine that any laborer was liable to imprisonment who refused to work according to the provisions of his contract until he had settled for all advances, no matter what misrepresentations may have been made to induce him to enter into the agreement. The contract-labor law has become a

The fraud which such statutes purport to penalize is not the concealment or misrepresentation of existing facts, such as financial condition, ownership of assets, or data relevant to credit. They either penalize promissory representations which relate to future action and conduct or they penalize a misrepresentation of the present intent or state of mind of the laborer.[33] In these "a hair perhaps divides the false and true." Of course there might be provable fraud even in such matters. One might engage for the same period to several employers, collecting an advance from each, or he might work the same trick of hiring out and collecting in advance again and again, or otherwise provide proof that fraud was his design and purpose. But in not one of the cases to come before this Court under the antipeonage statute has there been evidence of such subtlety or design. In each there was the same story, a necessitous and illiterate laborer, an agreement to work for a small wage, a trifling advance, a breach of contract to work. In not one has there been proof from which we fairly could say whether the Negro never intended to work out the advance, or quit because of some real or fancied grievance, or just got tired. If such statutes have ever on even one occasion been put to a worthier use in the records of any state court, it has not been called to our attention. If this is the visible record, it is hardly to be assumed that the off-the-record uses are more benign.

It is a mistake to believe that in dealing with statutes of this type we have held the presumption section to be the only source of invalidity. On the contrary, the substantive section has con-

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club which the foremen and superintendents draw upon the laborers who refuse to go to work or to continue at work. If a man leaves his employer before settling for advances, he will be pursued and apprehended, or someone will telephone to the constable, who will arrest the laborer. He will then be brought before the justice, and 'sent down the river,' to prison; or if he consents to labor until he shall have reimbursed for all advances and the fine and cost of the prosecution, the employer will settle with the court and constable and will take the laborer back into the forest. No doubt many of the laborers never attempt to escape, although they may consider that they have been basely deceived about the conditions of labor." Peonage Report, *supra* note 29, pp. 448-49.

[33] The Court at one time said, "The law gives a different effect to a representation of existing facts, from that given to a representation of facts to come into existence. To make a false representation the subject of an indictment, or of an action, two things are generally necessary, viz., that it should be a statement likely to impose upon one exercising common prudence and caution, and that it should be the statement of an existing fact. A promissory statement is not, ordinarily, the subject either of an indictment or of an action." Sawyer v. Prickett, 19 Wall. 146, 160.

tributed largely to the conclusion of unconstitutionality of the presumption section. The latter in a different context might not be invalid. Indeed, we have sustained the power of the state to enact an almost identical presumption of fraud, but in transactions that did not involve involuntary labor to discharge a debt. *James-Dickinson Farm Mortgage Co.* v. *Harry*.[34] Absent this feature any objection to *prima facie* evidence or presumption statutes of the state can arise only under the Fourteenth Amendment, rather than under the Thirteenth. In deciding peonage cases under the latter this Court has been as careful to point out the broad power of the state to create presumptions as it has to point out its power to punish frauds. It "has frequently recognized the general power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence in the courts of its own government. In the exercise of this power numerous statutes have been enacted providing that proof of one fact shall be *prima facie* evidence of the main fact in issue; and where the inference is not purely arbitrary and there is a rational relation between the two facts, and the accused is not deprived of a proper opportunity to submit all the facts bearing upon the issue, it has been held that such statutes do not violate the requirements of due process of law." *Bailey* v. *Alabama*.[35] But the Court added that "the State may not in this way interfere with matters withdrawn from its authority by the Federal Constitution or subject an accused to conviction for conduct which it is powerless to proscribe."[36] And it proceeded to hold that the presumption, when coupled with the other section, transgressed those limits, for while it appeared to punish fraud the inevitable effect of the law was to punish failure to perform labor contracts.

In *Taylor* v. *Georgia* both sections of the Act were held unconstitutional. There the State relied on the presumption to convict. But it was not denied that a state has power reasonably to prescribe the *prima facie* inferences to be drawn from circumstantial evidence. It was the substance of the crime to establish which the presumption was invoked that gave a forbidden aspect to that method of short-cutting the road to conviction. The decision striking down both sections was not, as the Supreme Court

[34] 273 U. S. 119.
[35] 219 U. S. 219, 238.
[36] 219 U. S. 219, 239.

of Florida thought, a casual and unconsidered use of the plural. Mr. Justice Byrnes knew whereof he spoke; unconstitutionality inhered in the substantive quite as much as in the procedural section and no part of the invalid statute could be separated to be salvaged. Where in the same substantive context the State threatens by statute to convict on a presumption, its inherent coercive power is such that we are constrained to hold that it is equally useful in attempts to enforce involuntary service in discharge of a debt, and the whole is invalid.

It is true that in each opinion dealing with statutes of this type this Court has expressly recognized the right of the state to punish fraud, even in matters of this kind, by statutes which do not either in form or in operation lend themselves to sheltering the practice of peonage. Deceit is not put beyond the power of the state because the cheat is a laborer nor because the device for swindling is an agreement to labor. But when the state undertakes to deal with this specialized form of fraud, it must respect the constitutional and statutory command that it may not make failure to labor in discharge of a debt any part of a crime. It may not directly or indirectly command involuntary servitude, even if it was voluntarily contracted for.

From what we have said about the practical considerations which are relevant to the inquiry whether any particular state act conflicts with the Antipeonage Act of 1867 because it is one by which "any attempt shall hereafter be made to establish, maintain or enforce" the prohibited servitude, it is apparent that we should not pass on hypothetical acts. Reservation of the question of the validity of an act unassociated with a presumption now, as heretofore, does not denote approval. The Supreme Court of Florida has held such an act standing alone unconstitutional.[37] A considerable recorded experience would merit examination in relation to any specific labor fraud act.[38] We do not enter upon the inquiry further than the Act before us.

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[37] Goode *v.* Nelson, *supra* note 18.

[38] On the practical effect of such laws as amounting to the existence of involuntary servitude in the United States, see: Peonage, Encyclopedia of Social Sciences; Commons & Andrews, Principles of Labor Legislation, p. 37; Wilson, Forced Labor in the United States, Chapters VI and VII; "Report of Chas. W. Russell, Assistant Attorney General, Relative to Peonage Matters," in Report of Attorney General (1937) p. 207; and Report of Immigration Commission, *supra* note 29.

Another matter deserves notice. In *Bailey* v. *Alabama* it was observed that the law of that state did not permit the prisoner to testify to his uncommunicated intent, which handicapped him in meeting the presumption. In *Taylor* v. *Georgia* the prisoner could not be sworn, but could and did make a statement to the jury. In this Florida case appellee is under neither disability, but is at liberty to offer his sworn word as against presumptions. These distinctions we think are without consequence. As Mr. Justice Byrnes said in *Taylor* v. *Georgia*, the effect of this disability "was simply to accentuate the harshness of an otherwise invalid statute."

We impute to the Legislature no intention to oppress, but we are compelled to hold that the Florida Act of 1919 as brought forward on the statutes as §§ 817.09 and 817.10 of the Statutes of 1941 are, by virtue of the Thirteenth Amendment and the Anti-peonage Act of the United States, null and void. The judgment of the court below is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

SUPREME COURT OF THE UNITED STATES.

No. 345.—October Term, 1943.

Emanuel Pollock, Appellant,
vs.
H. T. Williams, as Sheriff of Brevard County, Florida.

Appeal from the Supreme Court of the State of Florida.

[April 10, 1944.]

Mr. Justice Reed, dissenting.

The Thirteenth Amendment to the Constitution of the United States reads as follows:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

To meet the problem of peonage, that is, "compulsory service in payment of a debt,"[1] Congress enacted the legislation set out in note 8 of the Court's opinion which declared invalid laws of a state by virtue of which involuntary service is enforced or attempted to be enforced in liquidation of any debt. This Court reiterates today in accordance with its previous rulings that the second section of the Florida statute, § 817.10 set out in note one of today's opinion, is invalid under the Thirteenth Amendment and the Federal Act because this second section enforces labor by fear of conviction of the crime denounced in the first section. The second section provides that a refusal to perform labor for which one has contracted and been paid in advance is prima facie evidence of an intent to defraud under the first section which makes it a crime to obtain money with intent to defraud under a contract to perform labor. This conclusion is accepted as a proper interpretation of the Federal prohibitions. In the effort to obliterate compulsory labor to satisfy a debt Congress may invalidate a state law which coerces that labor by fear of a conviction obtained by a presumption of law which may be false in fact. *Taylor* v. *Georgia*, 315 U. S. 25.

However much peonage may offend our susceptibilities, and however great our distaste for a statute which is capable of use as a

means of imposing peonage on the working man, the present statute is, in this Court, no more immune than any other which a state may enact, from the salutary requirement that its constitutionality must be presumed, and that the burden rests on him who assails it, on constitutional grounds, to show that it is either unconstitutional on its face or that it has been or will be in fact so applied as to deny his constitutional rights.

This Court now holds, as it has held before, that when the presumption section is applied in the trial of a criminal charge under the substantive section, both are invalid and a conviction thus obtained by resort to a presumption of law which may be false in fact, cannot be sustained. But the Court's opinion fails to bridge the gap between these earlier decisions of the Court and its present conclusion that the substantive provision, when resorted to alone as the basis for a sentence on an admission of guilt, is likewise invalid, because of the mere existence of the presumption section.

Whether this conclusion rests upon the ground that the State of Florida cannot constitutionally make it a penal offense for a laborer fraudulently to procure advances of wages for which he intends to render no service or upon the ground that the presumption section has in fact operated in this case to coerce petitioner's plea of guilty, the one is plainly without support in law and the other is without support in the record.

So far as the decision of the Court rests on the ground that the substantive section is unconstitutional on its face, the decision necessarily proceeds on the assumption that because of the Thirteenth Amendment a state is without power to punish a workman who fraudulently procures an advance of a wage when he intends not to work for it, or that the two sections in law and in fact are inseparable in their application so that the substantive section is tainted by the presumption section, although in this case it is not shown to have influenced the plea of guilty.

We are given no constitutional reason for saying that a state may not punish the fraudulent procurement of an advance of wages as well as the giving of a check drawn on a bank account in which there are no funds, or any other course of conduct which the common law has long recognized, as the procuring of money or property by fraud or deceit. There is of course no constitutional reason why Florida should not punish fraud in labor contracts differently from fraud in other classes of contracts. Legislation need not seek to correct every abuse by a single enactment.

The state may select its objective. *Whitney* v. *California*, 274 U. S. 357, 370; *Tigner* v. *Texas*, 310 U. S. 141, 149. The Constitution does not require that all persons should be treated alike but only that those in the same class shall receive equal treatment.

Not only has the Supreme Court of Florida held as a matter of law that the two sections of the statute now before us are separable,[2] but it is obvious that as a matter of law the presumption section is not called into operation where, as here, the accused does not go to trial but pleads guilty to the substantive charge. In rejecting these conclusions as to the separability of the two sections, we take it that the Court is not rejecting the Supreme Court of Florida's interpretation of the Florida statute, but rather that it concludes as a matter of fact that the presumption section is so all-pervasive in its operation that we must conclude without further proof that it so operated in petitioner's case as to coerce his plea of guilty to the charge of violating the substantive section.

But neither the present record nor any facts of which we can take judicial notice lend support to that conclusion. For all that appears petitioner had no defense to the charge even though the substantive section had stood alone. Unless we are to presume that the statute can only be given an unconstitutional application, we cannot say that petitioner had any defense to the charge of fraud to which he pleaded guilty, and certainly we cannot treat the presumption section as depriving him of a defense which he did not have.

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[2] The Supreme Court of Florida said: "This is not the first challenge of the act which has appeared in this court. The identical matter was considered in Phillips *v.* Bell, 84 Fla. 225, 94 So. 699, where the court concluded that the portion of the law defining the crime was harmonious with the Thirteenth Amendment, and observed, without deciding the point, that if the part referring to the prima facie character of certain evidence should be pronounced unconstitutional the ruling would not affect the remainder."

The court then took up Bailey *v.* Alabama, 211 U. S. 452, and noted as to it: "We think it very significant that the court remarked upon the lack of doubt that the offenses defined could be made a crime. Gist of the decision, as we understand it was, summarizing, that the part of the law describing the crime and the one providing for the presumption were not interdependent and that if, in the prosecution, the state did not resort to the latter the validity of the former would be unaffected."

Later, speaking of our opinion in the *Taylor* case, the Florida court said: "The section anent presumptive evidence had been relied upon to secure a conviction, so the court again had for determination the question of the constitutionality of the first section when the second was brought into play. Not being faced with that problem here we conclude that the first Bailey decision and ours in Phillips *v.* Bell are in accord and that they in turn are not in conflict with the rulings in the Second Bailey case and Taylor *v.* State of Georgia, *supra*."

The Court apparently concludes that the enactment and maintenance of the presumption section, after a determination here of its invalidity, makes the entire statute invalid on its face. This result is reached by assuming that the existence of the presumption section coerces involuntary labor under the contract by fear of conviction for violation of the first or substantive section. We cannot properly take judicial notice of such an effect. If pleaded and proven a different situation would emerge.

The petition for habeas corpus in this case can hardly be said to go farther than object to conviction on the ground of the unconstitutionality of the Florida statute as a whole. No coercion to plead guilty is alleged. The statements in the petition as to lack of counsel and of knowledge of the elements of the offense are referred to in the Court's opinion but we do not understand that the Court relies upon them. No use was made of the presumption section at the trial. Petitioner pleaded guilty to the substantive crime. No allegations or proof appear in the record that the Florida statute was used or applied to promote peonage or involuntary servitude of petitioner or to coerce his plea of guilty. The decision is in effect that because the two sections standing together are capable of being used in violation of the Thirteenth Amendment and the peonage act, each must be taken to be invalid on its face. The presumption of constitutionality of statutes is a safeguard wisely conceived to keep courts within constitutional bounds in the exercise of their extraordinary power of judicial review. It should not be disregarded here.

We cannot conclude that a statute which merely punishes a fraud in a contract, as the first section does if considered alone, violates the provision of the Thirteenth Amendment against involuntary servitude or is null and void under 8 U. S. C. § 56 because it is an attempt to enforce compulsory service for a debt. Conviction under the statute results not in peonage, work for a debt, but in punishment for crime, probably in the county work house. Cf. *United States* v. *Reynolds*, 235 U. S. 133, 149. The conception embodied in the Court's opinion that the fear of conviction for his fraud might compel the defendant to work as agreed is without basis in the record. At any rate fear of punishment is supposed to be a deterrent to crime.

The conviction should be affirmed.

The CHIEF JUSTICE joins in this dissent.